

(30,287)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 365

INDUSTRIAL ASSOCIATION OF SAN FRANCISCO, CALIFORNIA INDUSTRIAL COUNCIL, INDUSTRIAL ASSOCIATION OF SANTA CLARA COUNTY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

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[fol. 1]

IN THE

**SOUTHERN DIVISION OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF CALI-
FORNIA, THIRD DIVISION**

In Equity

No. 1044

UNITED STATES OF AMERICA, Complainant,

vs.

INDUSTRIAL ASSOCIATION OF SAN FRANCISCO et al., Defendants

BILL OF COMPLAINT FOR VIOLATION OF ANTITRUST ACTS—Filed
May 26, 1923

The United States of America by John T. Williams, United States Attorney for the Northern District of California, its attorney, by Grove J. Fink, Special Assistant to the United States Attorney and by Henry A. Guiler and James Raleigh Kelly, Special Assistants to the Attorney General, of Counsel under the direction of the Attorney General brings this action in equity to prevent further restraints of trade and commerce contrary to the Act of July 2, 1890, known as "An Act to protect trade and commerce against unlawful restraints and monopolies" and Acts amendatory thereof and supplemental thereto and complains of the defendants hereinafter mentioned and alleges that:

I

For three years last past and for a long time prior thereto and up to the time of the filing of this action a large and important part of the trade and commerce of the United States which is the subject of the conspiracy hereinafter alleged and set forth consisted in manufacturing in the various and several states and territories of the United States and in foreign nations cement, brick mortar, plumbing supplies, lumber, plaster, steel, lath, sand, gravel, marble, stone, manufactured articles used in buildings, and other like articles hereinafter called in this action "Building materials" and transporting, shipping, selling, contracting for the sale of said building materials between and among the various and several states [fol. 2] and territories of the United States and the District of Columbia other than the states and territories in which the same were manufactured and between the United States and foreign nations; that there was a constant current of trade in said building materials between and among said states, territories and the District of Columbia and between the United States and foreign nations; that

said building materials were continuously manufactured and sold as aforesaid in states and territories other than the State of California, and the Northern District (Southern Division) thereof and in foreign nations and were constantly transported and shipped therefrom through the various states of the United States to said State of California and the Northern District (Southern Division) thereof and especially to the City of San Francisco in said state and district and thereupon they were oftentimes resold there and therefrom transported and shipped to and through other states and territories of the United States and to and through the District of Columbia and to foreign nations; there was a constant current of trade in said building materials to and through the State of California and the Northern District (Southern Division) thereof from the other states and territories of the United States and the District of Columbia and from foreign nations and therefrom to and through the other states and territories of the United States and the District of Columbia and to foreign nations.

II

That continuously for three years last past up to and including the day of filing of this complaint the Industrial Association of San Francisco, California Industrial Council Industrial Association of Santa Clara County, unincorporated voluntary associations, Builders' Exchange of San Francisco, Builders' Exchange of San Jose, Master Plumbers' Association, Geo. H. Tay Co., William Simmons & Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gledding, McBean and Co., [fol. 3] McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller and Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., corporations, William H. George, Emil Hogsber, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. C. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allrod, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Athol McBean and divers other corporations, associations, concerns and persons, hereinafter called the defendants, well knowing all the premises aforesaid, did, at and within the City and County of San Francisco, within the State of California, and the Northern District (Southern Division) thereof and within the jurisdiction of this court, engage, and are continuing and threatening to continue to engage, in a conspiracy to restrain trade and commerce in such building materials among the several states of the United States and with foreign nations in violation of the Act of July 2, 1890 (26

Stat. 209) aforesaid, and acts amendatory thereof and supplemental thereto.

III

That the divers means and methods, among others, which were agreed to be, were to be, and were used by said defendants in the furtherance of said conspiracy were as follows:

(1) Agreeing to refuse and refusing to sell, and refusing to permit others to sell to purchasers, prospective or otherwise, said building materials unless they agree (a) to employ a foreman and at least fifty per cent of the laborers, skilled and unskilled, on buildings which they desired to erect, who were not in any way affiliated with, connected with, or members of any labor union so called, (b) to assent to carry out, and carry out, and be bound by this "American Plan" so called, as hereinbefore next set forth.

(2) Collusively bidding and refraining from bidding against each other for the furnishing of said building materials, for, or for the erection of, any building or buildings and parts thereof for the purpose of enhancing the price thereof and to prevent competitors from obtaining the contract therefor.

[fol. 4] (3) Agreeing to determine and determining, arbitrarily, the persons, corporations and others who shall engage in the furnishing of building materials and in the construction of buildings or parts thereof.

(4) Coercing, intimidating, and preventing, by threats and otherwise, others from engaging as competitors in the business of constructing buildings and parts thereof, and from furnishing building materials therefor.

(5) Agreeing among themselves that no person or corporation, except members of the Builders' Exchange or the Industrial Association, shall engage in the business of erecting buildings or parts thereof or of supplying building materials therefor and using and causing others to use threats and intimidation to keep competitors, potential or otherwise, from engaging in said business.

(6) Agreeing upon and fixing arbitrarily the wages of foremen, workmen, and laborers, skilled or otherwise, employed in or about buildings or parts thereof to enhance their profit or profits on any particular job or jobs.

(7) Agreeing to and fixing, arbitrarily, the person or persons who shall be employed as foremen, laborers and workmen, skilled or unskilled, in and about the construction of any buildings or parts thereof.

(8) Agreeing to distribute and distributing secretly among themselves and to others employed in the same or a similar business as themselves "green lists" so called, commonly known as "black lists"

containing the names of persons, firms and corporations who have rightfully refused to join in said conspiracy and to become members of said associations, and to agree and abide by the by-laws, rules, resolutions and regulations thereof, or to be coerced into doing so by threats, fines or otherwise.

(9) Coercing others from resorting to redress through the courts of this state or of the United States, by threats of fighting and delaying for long periods any suit or suits which might be brought against them by such persons to secure such redress, although well knowing that such persons had a lawful right to win such suits and to secure adequate and speedy redress in such way.

(10) Agreeing with banks, trust companies and other monied corporations and concerns to coerce, intimidate, and compel builders and others, competitors of said defendants, to join in said conspiracy and to become members of said associations and to agree to and abide by the by-laws, rules, resolutions and regulations thereof, by refusing or threatening to refuse loans to such persons necessary to start, continue, or complete their building operations and by calling in, or threatening to call in, at inopportune or unnecessary times loans already made by them on such building operations.

(11) Discriminating and causing others to discriminate against laborers and workmen, skilled or unskilled, engaged or to be engaged in and about building operations because such laborers and workmen were affiliated and connected with and members of any labor union so called.

(12) Agreeing to form and forming said Industrial Association of San Francisco and said Builders' Exchange of San Francisco with headquarters in the City of San Francisco aforesaid.

(13) Agreeing to be bound by, and being bound by, and carrying out the by-laws, rules, resolutions and regulations of said Industrial Association and said Builders' Exchange.

IV

That said defendants have carried out the agreements and have performed the acts hereinbefore alleged and set forth and are continuing and threatening to continue so to do and by the conspiracy and the means aforesaid have restrained and are continuing to restrain a large and important part of the trade and commerce aforesaid.

V

Wherefore petitioner prays:

1. That writs of subpoena issue, directed to each and every of the defendants, commanding them to appear herein and answer, but not under oath (answer under oath being hereby expressly waived,) the allegations contained in this petition, and to abide by and perform such orders and decrees as the court may make in the premises.

2. That the court may adjudge and decree that the defendants have engaged in a combination and conspiracy in restraint of interstate and foreign trade and commerce in said building materials in the manner and by the means hereinbefore described in violation of [fol. 6] the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209).

3. That the defendants, their officers, directors, agents, servants, attorneys, or anyone acting under or through said defendants or assuming so to act, be, during the pendency of this suit, enjoined directly and indirectly, individually and collectively, from engaging in carrying out or maintaining said conspiracy or any other conspiracy like or similar thereto, the effect of which would be to, or might have a tendency to, restrain said trade and commerce in said building materials and from doing any act or using any means, or act or means like or similar thereto, in furtherance of said conspiracy or to effect the object thereof.

4. That the defendants, the Industrial Association of San Francisco, Builders' Exchange of San Francisco, California Industrial Council, Industrial Association of Santa Clara County, the Builders' Exchange of San Jose and the Master Plumbers' Association, be declared to be illegal and in violation of law and be dissolved and that the defendants and others be enjoined from forming any association, exchange, corporations, company or concern like or similar thereto.

5. That the defendants, their officers, directors, agents, servants, attorneys or anyone acting under or through said defendants or assuming so to act, be enjoined directly and indirectly, individually and collectively, from:

(a) Agreeing to refuse, and refusing, to sell and refusing to permit others to sell to purchasers prospective or otherwise, said building material unless they agree to employ a foreman and at least fifty per cent of the laborers, skilled and unskilled, on buildings which they desired to erect, who were not in any way affiliated with, connected with, or members of any labor union so called and to assent to carry out, and carry out, and be bound by this "American Plan" so called as hereinbefore next set forth and attempting so to do.

(b) Collusively bidding and refraining from bidding against each other for the furnishing of said building materials for, or for the erection of, any buildings or buildings and parts thereof, and attempting so to do.

[fol. 7] (c) Agreeing to determine and determining the persons, corporations and others who shall engage in the furnishing of building materials and in the construction of buildings or parts thereof and attempting so to do.

(d) Coercing, intimidating, and preventing, by threats and otherwise, others from engaging as competitors in the business of con-

structing buildings and parts thereof, and from furnishing building materials therefor and attempting so to do.

(e) Agreeing among themselves that no persons or corporation, except members of the Builders Exchange or the Industrial Association, shall engage in the business of erecting buildings or parts thereof or of supplying building materials therefor and using and causing others to use threats and intimidation to keep competitors, potential or otherwise, from engaging in said business and attempting so to do.

(f) Agreeing upon and fixing the wages of foremen, workmen and laborers, skilled or otherwise, employed in or about buildings or parts thereof and attempting so to do.

(g) Agreeing to and fixing the person or persons who shall be employed as foremen, laborers and workmen, skilled or unskilled, in and about the construction of any buildings or parts thereof and attempting so to do.

(h) Agreeing to distribute, and attempting to distribute, among themselves and to others employed in the same or a similar business as themselves "green lists" so called, commonly known as "black lists" containing the names of persons, firms, and corporations who have refused to join in said conspiracy and to become members of said associations and to agree to and abide by the by-laws, rules, resolutions and regulations thereof, or to be coerced into doing so by threats, fines or otherwise.

(i) Coercing and attempting to coerce, others from resorting to redress through the courts of this state or of the United States, by threats of fighting and delaying for long periods any suit or suits which might be brought against them by such persons to secure such redress.

(j) Agreeing with banks, trust companies and other corporations and concerns to coerce, intimidate, and compel builders and others, competitors of said defendants, to join in said conspiracy and to become members of said associations and to agree to and abide by the by-laws, rules, regulations and resolutions thereof, by refusing or threatening to refuse loans to such persons and by calling in, or threatening to call in, loans already made by them and attempting so to do.

[fol. 8] (k) Discriminating and causing others to discriminate against laborers and workmen, skilled or unskilled, engaged or to be engaged in and about building operations because such laborers and workmen were affiliated and connected with and members of any labor union so called and attempting so to do.

(l) Abiding, abetting, assisting, encouraging or counseling each other or others to do any of the acts or things heretofore declared unlawful or enjoined and attempting so to do.

6. That the plaintiff have such other and further relief as may seem meet to the court or justice may require.

John T. Williams, United States Attorney for the Northern District of California. Grove J. Pink, Special Assistant to the U. S. Attorney. Augustus T. Seymour, Assistant to the Attorney General. Henry A. Guiler, Special Assistant to the Attorney General. James Raleigh Kelly, Special Assistant to the Attorney General.

[fol. 9] [File endorsement omitted.]

Jurat showing the foregoing was duly sworn to by James Raleigh Kelly omitted in printing.

[fol. 10] IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA, Complainant,
vs.

INDUSTRIAL ASSOCIATION OF SAN FRANCISCO, CALIFORNIA Industrial Council, Industrial Association of Santa Clara County, Unincorporated Voluntary Associations; Builders' Exchange of San Francisco, Builders' Exchange of San Jose, Master Plumbers' Association, George H. Tay Co., William Simmonds & Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller and Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., Corporations; William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean, et al., Defendants

JOINT AND SEVERAL ANSWER OF DEFENDANTS INDUSTRIAL ASSOCIATION OF SAN FRANCISCO, BUILDERS' EXCHANGE OF SAN FRANCISCO, MASTER PLUMBERS' ASSOCIATION, GEORGE H. TAY CO., HENRY COWELL LIME AND CEMENT CO., GLADDING, McBEAN & CO., WILLIAM H. GEORGE, EMIL HOGBERG, JOSEPH B. KEENAN, J. D. MCGILVRAY, R. J. H. FORBES, ALEX MENNIE, T. C. BERG, JAMES H. PINKERTON, CHARLES W. GOMPERTZ, D. J. SULLIVAN, GEORGE T. BOWEN, GEORGE R. PERKINS, MARION D. COHN, J. J. NEAL, D. B. FARQUHARSON, C. S. ALLRED, JOHN VILLER, LAWRENCE E. CRAWFORD, WILLIAM P. GOSS, JOHN DOE FURMAN, ATHOLL McBEAN, W. P. FULLER & Co., CRANE Co.—Filed June 9, 1923

[fol. 11] Now come the following defendants, to wit, Industrial Association of San Francisco, Builders' Exchange of San Francisco,

Master Plumbers' Association, George H. Tay Co., Henry Cowell Lime and Cement Co., Gladding McBean & Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean, W. P. Fuller & Co., Crane Co., and for joint and several answer to the petition and complaint in equity of the complainant above named, and also by way of plea thereto, hereby jointly and severally plead and answer as follows, to wit:

I

These defendants plead and allege that the facts set forth in the bill of complaint in equity herein and the bill and petition of complaint in equity herein by the complainant, are insufficient in fact to constitute a valid cause of action in equity.

II

These particular defendants make further answer as follows, to wit:

They admit that a large and important part of the trade and commerce of the United States consists in the transporting, shipping and selling of the building materials described in paragraph one of the bill of complaint in equity herein, and that some of said building materials were manufactured and sold in states and territories other than the State of California and in foreign nations, and were transported and shipped therefrom to said State of California. But in that connection they allege that a large part of the building materials used in the City and County of San Francisco, State of California, were manufactured exclusively in the State of California.

[fol. 12]

III

These defendants deny that continuously, or otherwise, for three years last past, or at all, up to and including the day of filing the complaint, or at all, these defendants, or either or any of them, of themselves, with themselves, or with any other persons, firms, corporations, concerns or associations, did at and within the City and County of San Francisco, State of California, and within the jurisdiction of this Court, or any other place, engage, and are continuing and threatening to engage, or are continuing or threatening to engage in a conspiracy to restrain trade and commerce in such building materials, or in a conspiracy to restrain either trade or commerce in such or any building materials, or to restrain any trade or commerce in anything among the several states of the United States or with foreign nations in violation of the Act of July 2, 1890, or in violation of any other act, or of any other law, or any acts amendatory thereof or supplemental thereto, and in this behalf,

These defendants deny that they are engaging in, or have ever engaged in, or are threatening to engage in any conspiracy of any kind to restrain either trade or commerce, or do anything else.

IV

Further answering said complaint in equity, and in particular the detailed allegations set forth in paragraph three thereof, these defendants deny that they, or either or any of them agreed to use, or did use, or have used the divers means or methods, or any means or methods in furtherance of the alleged conspiracy set forth in the complaint, or in furtherance of any conspiracy; and in connection therewith,

These defendants particularly deny that they agreed to refuse, or did refuse to sell, or did refuse to permit others to sell to purchasers, prospective or otherwise, building materials, unless they agreed to employ a foreman and at least fifty per cent of the laborers, skilled [fol. 13] and unskilled, on buildings which they desired to erect, who were not in any way affiliated with, connected with, or members of any labor union so-called; or unless said purchasers, prospective or otherwise, agreed, assented to carry out, or did carry out, or were bound by the "American Plan" so called, or otherwise, or at all, except as hereinafter in this answer more particularly set forth.

V

These defendants deny that among either or any means or methods ever or now used by them, or either or any of them, was that of collusive bidding or refraining from bidding against each other for the furnishing of said building materials for, or for the erection of any building or buildings or parts thereof, either for the purpose of enhancing the price thereof, or of preventing competitors from obtaining the contract therefor, or for any other purpose; and in that connection,

These defendants deny that they have ever at any time made collusive bids, or agreed to make collusive bids, or refrained or agreed to refrain from bidding against each other, or in any connection for anything, or for any purpose.

VI

These defendants deny that they, or either or any of them, have ever agreed to determine, or have ever determined, arbitrarily, or otherwise, the persons or corporations or others who shall engage in the furnishing of building materials or any other materials, or in the construction of buildings, or any parts thereof.

VII

These defendants deny that they, or either or any of them, ever at any time coerced, or intimidated, or prevented, or threatened to

coerce, or intimidate, or prevent by threats, or otherwise, others from [fol. 14] engaging as competitors in the business of constructing buildings or parts thereof, or from furnishing building materials therefor.

VIII

These defendants deny that they, or either or any of them, have ever agreed among themselves that no person or corporation, except members of the Builders' Exchange or of the Industrial Association of San Francisco, shall engage in the business of erecting buildings or parts thereof, or of supplying building materials therefor, or of using or causing others to use threats and intimidation to keep competitors, potential or otherwise, from engaging in said business.

IX

These defendants deny that they, or either or any of them, have agreed upon, or fixed arbitrarily the wages of foremen or workmen or laborers, skilled or otherwise, employed in or about buildings, or parts thereof, to enhance their profit or profits on any particular job or jobs, or for any purpose; and in that connection,

These defendants allege that certain of these defendants who employ mechanics, did and have agreed that they would pay the minimum wages fixed by a board of arbitration created by mutual consent and nomination of employers and employees in the building trades industries.

X

These defendants deny that they agreed to distribute, or did distribute secretly, among themselves, or to others employed in the same or a similar business as themselves, "green lists" so called, commonly known as "black lists," containing the names of persons, firms or corporations who have rightfully refused to join in said or any conspiracy, or have refused to become members of said associations, or to agree or abide by the by-laws, rules, resolutions and regulations [fol. 15] thereof, or to be coerced into doing so by threats, fines or otherwise; and

These defendants deny that they, or either or any of them, have distributed, or agreed to distribute among themselves, any lists of any kind save and except as follows, to wit:

The Industrial Association of San Francisco has at all times given information to any person, firm or corporation, whether engaged in the building business, or in any other line of business, as to whether any person engaged in the building business was or was not doing his business on an exclusively closed shop, union plan, or was doing it on the open shop plan, but none of such lists have ever been circulated or distributed except to persons who have directly asked for this service and this information.

XI

These defendants deny that they, or either or any of them, coerced others from resorting to redress thru the courts of the State of California, or of the United States, by threats of fighting or delaying for long periods any suit or suits which might be brought against them by such persons to secure such redress, or by any threats, or otherwise, or at all, either well knowing or not knowing that such persons had a lawful right to win such suits or to secure adequate or speedy redress in such way; and in that connection,

These defendants deny that they, or either or any of them, ever coerced or attempted to coerce any one or any number of persons for any purpose.

XII

These defendants deny that they, or either or any of them, have agreed with banks, or trust companies, or other monied corporations or concerns, to coerce, intimidate, or compel builders or others, competitors of said defendants, to join in such conspiracy or to be [fol. 16] come members of said associations, or to agree to a'ide by the by-laws, rules, resolutions and regulations thereof, either by refusing or threatening to refuse loans to such persons necessary to start, continue or complete their building operations, or by calling in, or by threatening to call in, at inopportune or unnecessary or other times, loans already made by them on such building operations; and

These defendants deny that they, or either or any of them, have ever agreed with banks, trust companies or other monied corporations or concerns, to coerce, intimidate or threaten any builders or others in any way.

XIII

These defendants deny that they, or either or any of them, have ever discriminated or caused others to discriminate against laborers or workmen, skilled or unskilled, engaged or to be engaged in or about building operations, because such laborers were affiliated or connected with, or members of any labor union so called, or because of any other reason.

XIV

These defendants deny that they, or either or any of them, agreed to form or did form the Industrial Association of San Francisco, or the Builders Exchange of San Francisco, for any unlawful purpose whatsoever, or for the purpose of aiding in any unlawful enterprise or conspiracy, or for the purpose of making any combination of any kind.

XV

These defendants deny that they have agreed to be bound by, or are being bound by, or are carrying out the by-laws, rules, resolu-

tions and regulations of said Industrial Association, or of said Builders' Exchange; but in this behalf,

These defendants allege that some of these defendants are members of said Industrial Association and some are not members thereof; and some of these defendants are members of the Builders' Exchange [fol. 17] change, and others of these defendants are not members thereof; and only those defendants who are members of either of said organizations have agreed to be bound by the by-laws, rules, resolutions or regulations of the respective organization to which the particular defendant may belong.

XVI

Further answering said complaint, and in particular the provisions of paragraph four thereof, these defendants deny that they, or either or any of them, carried out the or any of the agreements, or performed the or any of the acts set forth in said complaint, except as in this answer modified or qualified; and they deny that they are continuing or threatening to continue to do so; and

These defendants furthermore deny that by the or any conspiracy, or the or any of the means referred to, or otherwise, or at all, or in any manner, that they, or either or any of them, have restrained, or are continuing to restrain a large and important, or a large or important, or any part of the trade or commerce mentioned in said complaint, to wit, trade and commerce between the various and several states and territories of the United States or between them and foreign nations.

XVII

These defendants further allege that the defendant, Industrial Association of San Francisco, is a voluntary unincorporated association of a large number of persons and firms residing in or doing business in the City and County of San Francisco, and was organized on or about the eighth day of November, 1921. That the objects of said Association are as follows, to wit:

The purposes and objects for which it is formed are to promote the happiness and prosperity of the people of San Francisco, and, thru harmony and efficiency, to make of San Francisco a great metropolis.

[fol. 18] To accomplish this, it is the object of this Association to aid in making San Francisco constantly attractive first, to men who desire to work; second, to men engaged in constructive enterprises; and, third, to investors of capital.

In the attainment of these purposes and objects, the Industrial Association commits itself to the policy of furthering and preserving certain basic principles indispensable thereto. Among these basic principles are:

(1) The right of any person to seek, secure and retain work for which he is fitted, and the right of the employer to engage or dismiss

employees, should not be abridged or denied because of membership or lack of membership in any organization or association of any kind.

(2) Efficiency in industry: This should be created and maintained to enable our enterprises to cope with those of other places. Superior skill and industry in work should be permitted to earn an adequate reward. The establishment of this principle, however, is not to be used to reduce the earnings of a less able man below a fair return for the work done. No artificial limit or restriction should be placed upon the normal production of any man or upon **the use of any appliance**, invention or other means to increase output, always having due regard for the health, safety and well-being of the individual.

(3) The right of management is inseparable from responsibility for industrial results. Therefore the right of the employer to engage or dismiss men individually on merits must not be circumscribed; the right on all occasions, however, to be exercised only upon broad principles of justice, and with a recognition of the obligation on the part of management to cooperate with the employee in securing so far as possible continuous employment.

(4) No understanding should be reached between employers and employees that ignores the public interest, and no agreement should be tolerated that is illegal or contrary to sound public policy, whether made between employers themselves or with their employees or others.

XVIII

These defendants further allege that said Industrial Association of San Francisco does no business of itself; that those who are members thereof include all walks of commercial and professional industry, including building, machine work, shipping, banking, lawyers, doctors, dentists and store-keepers; that its members compete among themselves in their respective industries, and compete with other members in the same industry who are not members of the said Association. That said Industrial Association of San Francisco has nothing whatever to do with fixing the prices or [fol. 19] quantities of any commodity that may be bought or sold, and that any person in San Francisco who believes in the principle of the open shop in industry may become a member of said Industrial Association; that said open shop, as said Industrial Association defines it, means the opportunity for any man to work in the City and County of San Francisco regardless of whether he does or does not belong to any particular labor, political or religious organization; it also means the willingness of any employer to employ an employee whose services he requires, if that employee be competent and reputable, regardless of his membership or non-membership in any labor, political or religious organization. Any one believing in these principles and desirous of living up to them can become a member of said Industrial Association, and said membership in nowise imposes upon him any obligation as to the prices,

quantities or nature of materials, goods, or services that he may buy or sell.

That said Industrial Association confines its activities exclusively to the City and County of San Francisco and was organized on account of the following reasons, to wit:

(a) Prior to February 1st 1921, the building trades industry in the City and County of San Francisco was on what is termed a "closed shop" basis; that is to say, with a negligible exception which these defendants believe did not exceed one per cent, every workman working in the building trades industries was a member and was compelled to be a member of some building trades union. There existed over fifty different unions in the building trades industries, each separate craft being organized into a separate union including not only the skilled crafts but even common labor. Each of these crafts insisted upon working on what is called the closed shop basis; that is to say, they refused to work on any building or for any employer who [fol. 20] employed any building trade mechanic of any craft who was not a member of a San Francisco union. In addition to this, they imposed restrictions upon the manner in which work could be done, the tools and appliances that could and could not be used, and imposed numerous other arduous, unnecessary and uneconomic conditions upon the building industry. In the event of any difficulty between any member of any one of these building unions and his employers, it was the usual and customary thing not only for the employees of the particular craft involved in the difficulty to strike, but for every other employee on the job or on the building or working for the employer who worked in any of the building trades crafts, likewise to join in a sympathy strike and boycott. These unions confederated and associated themselves together in the Building Trades Council, a central organization composed of all the respective building unions in the City and County of San Francisco, and acted in combination and concert in support of the demands of each and every one of its subordinate members. Thru the economic pressure of such a combination and thru threats of striking in many of these subordinate crafts and unions, the respective unions demanded from and received from their employers written agreements under the terms of which, generally speaking, their employers agreed that they would not employ any person in that particular calling who was not a member of the particular San Francisco union representing that craft. By reason of these conditions it was impossible for any person, either living in San Francisco or coming to San Francisco from any other point, to work in any of the building trades in San Francisco without becoming a member of the local San Francisco union, and in most instances the cost of such membership was prohibitive, and in many instances membership absolutely refused.

(b) That in addition to the foregoing conditions and restrictions, many of the unions promulgated and forced upon their employers [fol. 21] rules limiting the number of apprentices; that is to say, the number of persons who would be permitted to learn the particular

calling. In this manner the said unions and the said Building Trades Council obtained a monopoly of all building trade labor in the City and County of San Francisco.

(c) In the very early part of 1921 said Building Trades Council entered into a written arbitration agreement with the defendant Builders' Exchange of San Francisco and also with the San Francisco Chamber of Commerce, which agreement was voluntarily entered into, and under the terms of which agreement they selected a board of arbitration which was to adjust and fix wages in the various building trades crafts for the year 1921. Thereafter said three parties jointly and voluntarily agreed upon the selection of His Grace, Reverend Edward J. Hanna, Archbishop of California, M. C. Sloss recently retired Justice of the Supreme Court of the State of California, and George L. Bell, a citizen of the State of California, as the arbiters who were to determine the wages to be paid for the year 1921, and also were empowered to investigate and do away with some of these unjust and uneconomic rules, regulations and restrictions of the labor unions. Thereupon said Board of Arbitration proceeded with its hearings and made a tentative wage scale, whereupon the said Building Trades Council openly repudiated the said award, refused to be bound by it, and the members of the craft affected by said ruling struck and refused to work, thereby putting to practically a complete standstill the building operations in the City and County of San Francisco solely on account of their refusal to abide by the wage award of an arbitration board that had been voluntarily selected by them as well as the other parties. Some weeks were thereupon spent in an endeavor to persuade the members of the striking unions to go back to work, but they refused to do so. Thereupon two mass meetings of large bodies of men were held, which mass meetings were attended [fol. 22] by representative citizens of all walks of life in San Francisco for the purpose of determining what to do.

(d) It was resolved then that building work in San Francisco could not stop, and that it was most desirous to have the building work done by San Francisco people. But if the San Francisco mechanics refused to do the work, then mechanics must be employed from elsewhere to do so. Funds were subscribed and raised and placed in the hands of a committee of the Chamber of Commerce, and mechanics of all kinds were employed for the purpose of going to work. In employing these mechanics they were given written contracts assuring them of protection, which contracts also set forth the wages which would be paid, which wages were the minimum wages fixed by the Arbitration Wage Board; and they were also assured that so long as they were competent mechanics they would be protected in their right of earning a living in San Francisco so long as they desired to remain here.

(e) A general appeal was made to the entire community, and support for the committee obtained from the general body of the community. The strike was then carried on for about five or six months,

whereupon the Industrial Association was created to continue the work started by the committee of the Chamber of Commerce.

(f) During the progress of the strike it was announced by the committee, and subsequently reaffirmed by the newly organized Industrial Association, that the people of San Francisco would protect any workman in his right to work in San Francisco regardless of membership or non-membership in a labor union. Work was offered repeatedly and repeatedly to the striking union men, the sole condition being that they must not refuse to work on buildings or for employers who employed non-union men.

(g) Eventually, toward the end of September, nearly all of the unions went back to work, working on buildings and for employers who employed the non-union men who had been brought in earlier to [fol. 23] help the strike situation, this condition of work being generally described as the open shop, to which no discrimination was exercised on account of a man's membership or non-membership in a labor union.

All the crafts of the Building Trades Council, with the exception of one, to wit, the granite workers, thus returned on open shop conditions, and, with the exception of three of them, all have worked continuously and steadily in the City and County of San Francisco since that time. The three exceptions were: the bricklayers, the plasterers and the plumbers.

(h) In March of 1922, about ninety per cent of the mechanics working in the plumbing business in San Francisco were union men, but mingled with them were about ten per cent of non-union men. One day the Plumbers' Union served notice that the plumbers would strike unless these non-union men were dismissed from work in San Francisco. Their demand was refused, whereupon all the union plumbers in San Francisco again went out on strike, altho they made demand for no increase in wages and made no complaint upon any other working conditions; but they did insist that they would refuse to work unless these ten per cent non-union plumbers were discharged.

About the same time the bricklayers struck, likewise refusing to work for any contractor or any mechanic who employed non-union bricklayers; and the same condition took place with regard to the plasterers.

Had the demands of the Plasterers' Union, the Plumbers' Union and the Bricklayers' Union been acceded to, it would have meant the unjust and unlawful discharge of every non-union plumber, bricklayer and plasterer in San Francisco, and would have lead to the same demands being made in each of the other crafts of the Building Trades Council.

[fol. 24] At the time of the general strike, when the committee of the Chamber of Commerce undertook to bring men in, the announcement was made that thereafter all restrictions on the number of apprentices who could learn a trade would be abolished; that all unjust and artificial rules limiting output would be ignored; that

that all rules and regulations prohibiting the use of proper healthful and improved modern mechanical appliances for the economical doing of work would be disregarded. And each and all of said regulations, rules and limitations have been, generally speaking, disregarded in the building industry in San Francisco since about June 1st 1921. That each and all of said rules, regulations and limitations, militated against the building business, enhanced the cost thereof and interfered with the ready disposition of building materials, and in many instances retarded and prevented building work in the city of San Francisco.

That at the time of the second strike of the plasterers, plumbers and bricklayers in about March, 1922, a large percentage, to wit, about ninety per cent of all the employers, continued working on the American plan. In the plumbing industry, out of a total of about two hundred men engaged as employers in plumbing work, only about fifteen men commenced to operate under closed union conditions.

With the commencement of this second strike by the plasterers, plumbers and bricklayers, their three unions resumed the practices of boycotting all people who employed non-union mechanics, carrying their boycott to the extent of striking on jobs far removed from the city of San Francisco because the particular employer happened to be working with non-union men in the city of San Francisco.

With the commencement of this second strike in March, 1922, a number of acts of violence occurred, in which non-union men were molested, harassed, insulted and beaten, and property on which non-[fol. 25] union mechanics were working was wantonly destroyed or damaged.

(i) For many years prior to March, 1921, it had frequently been the custom of these unions to boycott materials fabricated by manufacturers and used in their respective crafts for any, and sometimes no reasons whatsoever, and manufacturers of building materials, such as cement, lime, mortar and plumbing materials, frequently had their materials blacklisted and boycotted to such an extent that their material was forced off of a particular market, these boycotts and blacklists being done by the unions as a part of a union controversy.

To meet this situation, and to protect themselves from similar boycotts and blacklists, in about April or May of 1921, after the second strike, which was occasioned solely by the demand of the union men that all non-union men be dismissed, some material houses, including some of these defendants, did refuse to sell to the unions during the continuance of that strike, or to the agents, representatives and associates of the unions during the continuance of that strike, materials to be used on closed shop union work in the city of San Francisco.

A large part of the materials so used was fabricated and manufactured in the State of California. Some were manufactured without the State of California, but shipped to the State of California

and to the city of San Francisco, where they reached their final destination and resting place and were put on the general shelves and in the general bins of stores operated in the city of San Francisco. That these goods, so refused to such unions and representatives and aids and associates of the unions, were not interstate goods or interstate shipments or commerce of any kind, character or description, but had lost completely their interstate commerce character and had become commingled with other properties within the State of California. That said refusals in nowise were made for [fol. 26] the purpose of restraining or interfering with or impeding interstate commerce of any kind, character or description, nor did it have that result or effect; but, on the contrary, said refusals were made solely by those who made such refusals to protect themselves and their business against the unjust acts, boycotts and black-lists of the striking unions.

That as a matter of fact, interstate shipments have neither been restrained, nor impeded, nor interfered with, but, on the contrary, due to the fact that San Francisco was operating on the open shop principle, and was a city where union men as well as non-union men could freely obtain employment, business conditions generally improved, and during the year 1922, the year complained of, the shipment of building materials into the State of California greatly increased. That prior to June 1st 1921, many commodities shipped in interstate commerce had never been shipped into the city of San Francisco or into the State of California or used there in any appreciable quantities due largely to the local conditions brought about thru the closed shop efforts of the unions. But that since June 1st 1922, San Francisco and the State of California have both become open markets for building materials manufactured and shipped from other states and from foreign countries in very large quantities, which had never been shipped into this state in real commercial quantities before.

(j) That it is true that during the course of this strike the Industrial Association did aid in financing the transportation of mechanics to San Francisco and in paying for the cost of protecting them, as likewise did the Builders' Exchange of San Francisco.

It is also true that some of these defendants employed these non-union mechanics and are still employing them.

It is likewise true that the Industrial Association of San Francisco has contributed financially to the labor controversy with the [fol. 27] unions. But it is not true that the defendant, the Industrial Association of San Francisco, and/or these defendants have combined or conspired one with the other, or with anybody else, at any time, or for any purpose, to interfere with interstate commerce.

(k) Many of these defendants, together with those of other citizens of San Francisco, have associated themselves into the Industrial Association of San Francisco. Most of these members are in no way related to or interested in the building industry, but believe in the fundamental right of every human being to work for every employer who desires to employ him, regardless of his union or

non-union affiliations. Believing thus, these persons so associated in the Industrial Association of San Francisco, prefer to give their patronage to and work with and for other people having the same belief and faith, and living and acting according to said belief and faith.

(l) That since its organization, the defendant Industrial Association of San Francisco has maintained and conducted free employment bureaus in which they render free service to mechanics of all classes in seeking to obtain employment for them, all without charge to the workmen or the mechanics.

(m) That in addition thereto, this Industrial Association has maintained and is still maintaining a great many trade schools in which this Industrial Association is having boys and men of all kinds and classes and ages taught useful trades and callings and made experienced in some trade, craft or calling, all of which work is being done by the Industrial Association at its own cost and free of all expense to the apprentice, student or scholar.

(n) That the sole purpose of the organization of the Industrial Association, and the sole purpose and the extent to which it is co-operating with the Builders' Exchange of San Francisco or any of the other defendants, is for the purpose of maintaining an open shop [fol. 28] industrial condition in the city of San Francisco. That is the only purpose for which it is formed, and the only thing that this association of defendants working together has sought to accomplish.

XIX

That the defendant Builders' Exchange of San Francisco is a corporation duly organized and existing under the laws of the State of California, and having its office in the City and County of San Francisco, said State.

That the object of its organization is:

(1) To provide (either by lease or purchase), furnish and maintain suitable quarters for the use of its members, for meeting rooms, offices and other necessary purposes.

(2) To join in one organization all reputable persons, firms and corporations engaged in contracting, manufacturing, merchandising, or other business in connection with the building industry of San Francisco.

(3) To take appropriate action, from time to time, to provide just and equitable methods of dealing as between the members of the Exchange, architects, engineers, owners and employees.

(4) To acquire, preserve and distribute among the members all valuable information regarding the business in which they are severally engaged.

(5) To foster the opening of bids in public; to discourage the peddling of bids and irregular or irresponsible bidding; to promote

the use of standard bidding blanks and standard contract forms; to oppose strikes and boycotts; to encourage cooperative effort in establishing and upholding honest and efficient business principles in the building industry.

(6) To foster the unrestricted development of proficient mechanics and competent and responsible masters in the respective trades.

XX

That said corporation was formed on or about July 5th, 1890. It engages in no business whatsoever and has nothing to do with the fixing or maintaining of prices on any commodities or labor nor the amounts of any bid for any work to be done, but is merely an association for the convenience of its members where the general business of building may be regulated and efficiently and economically transacted.

XXI

These defendants deny that at any time have any of the defendants [fol. 29] or any one else refused to sell building materials to any person unless they agreed to employ a foreman and at least fifty per cent of the laborers, skilled and unskilled; but, on the contrary, allege that most of the building work being done in San Francisco now and ever since September, 1921, has been done with the full knowledge and approval of these defendants, and that never at any time has any demand been made that at least fifty per cent of any labor, skilled or unskilled, be non-union men; but on the contrary,

These defendants allege that the only refusals to sell materials have been in the sales to persons who under no circumstances would employ a single man who was not a member of a union.

These defendants allege that they have never agreed, talked about or thought about collusive bidding or refraining from bidding against each other for the erection of buildings or parts thereof; but upon the contrary, that the sole object these defendants have had in mind in the work that they have done together is to make possible open and unrestricted bidding of all kinds to make possible the open competition of foreign and interstate goods in the local market, and to make possible the open competition of labor of all kinds in the San Francisco market; and the very purpose of their organization has been to break the monopoly which the building trades unions of San Francisco have for many years exercised in the building business.

XXII

These defendants deny that they have ever agreed to determine arbitrarily, or otherwise, who shall engage in the furnishing of building materials; or deny that they have ever coerced or intimidated or prevented by threats, or otherwise, others engaging as competitors in the business; but on the contrary, they allege that since the establishment of open shop conditions in the city of San Fran-

cisco, there is for the first time in many years a free and healthy [fol. 30] competition and a free and healthy bidding in competition which did not exist before, and that the very maintenance of the closed shop union conditions made possible restrictions on bidding, and the maintenance of the open shop conditions makes it difficult.

XXIII

These defendants deny that they have agreed among themselves that none except members of the Builders' Exchange or the Industrial Association shall engage in the business of erecting buildings; but, on the contrary, they have insisted that it was the right of every one. In connection with that right, however, they had believed that it was the duty of every one engaged in business to so conduct his business as not to unlawfully or improperly discriminate against a human being desiring to work for a living in that business.

XXIV

These defendants deny that they ever have agreed upon or fixed arbitrarily, or otherwise, the wages of foremen, workmen or laborers; but they do admit that they agreed to maintain as a minimum wage the wages fixed at the time by the Arbitration Wage Board, as hereinbefore set forth, and they have sought in every way to see that all skilled workmen in the Building Trades Council were paid not less than the amount said Arbitration Wage Board fixed as the wage scale.

XXV

These defendants deny that they have agreed to or did fix arbitrarily the person or persons who shall be employed as foremen, laborers or workmen, in and about the construction of any building; but, on the contrary,

These defendants admit that they have sought to obtain for every human being who is competent and skilled, the right to work upon a building or buildings in San Francisco if his employer desired to [fol. 31] employ him.

XXVI

These defendant deny that they agreed to or did distribute among themselves blacklists containing the names of persons, firms or corporations refusing to join this Association. But they do admit that the Industrial Association has frequently been asked by contractors, by merchants, by men in the building material business, and by other people desiring to build houses and seeking the names of prospective contractors and material men. That it has given any and all information connected with the building business to said inquirers, practically all of whom were members of this Association.

It further admits that of the thousands of members of the Industrial Association, most of them are desirous of having their work

done for them upon the open shop basis and refuse to have work done for them by contractors who discriminate against men not belonging to labor unions, and that in response to such inquiries, which have come from private citizens, architects, engineers and people in the material business, that they have, whenever requested, given the names, so far as they had them, of all those doing business on the open shop plan, and also whenever requested have given the names of all those doing business on the closed shop plan; but that the giving of said lists or said information was never secret, but, on the contrary, was open; and that the giving of said lists was in no sense a blacklist, nor was the same distributed with any intent or purpose to interfere, nor did it in any way interfere with or restrain any interstate or foreign commerce.

XXVII

These defendants allege that for nearly twenty months now many thousands of workmen who are members of labor unions have been [fol. 32] working continuously and steadily and with good pay on the buildings of San Francisco. That for more than twenty months now past not more than seven or eight per cent of the union mechanics and laborers in the building business have been on strike or attempted to strike.

These defendants are informed and believe, and on such information and belief allege the fact to be that for more than twenty months last past about seventy per cent of the men working in the building industry in San Francisco have been and are members of the labor unions, and that during said time approximately nine to ten thousand members of labor unions have been steadily and regularly employed in the building business in San Francisco with the knowledge of these defendants. That these defendants have never interfered with them, but many of them are employed by some of these defendants.

XXVIII

These defendants further allege that before they contracted to bring non-union men into San Francisco, the union men were offered the contracts first. That in the operation of the employment offices and the schools of the Industrial Association, the services and facilities for the employment offices and those schools are open to union and non-union mechanics, and, in the case of the schools, to the sons of the union as well as the non-union mechanics.

XXIX

These defendants allege that at the present time and during the last twenty months there has been work for every union mechanic desiring to work, and the opportunity for employment if the union man desired to work, and that no union man during said period of time has been denied or prevented from obtaining employment at

very good wages with very good working conditions, but that such of them as have not worked owe their non-employment solely to the [fol. 33] refusal to work on a job or a building or for a contractor on which or for whom a non-union man was working.

XXX

These defendants allege that so far as they are informed or believe, and therefore allege the fact to be, that none of the unions of the building trades are now on strike, save and except the granite-cutters or granite-workers, who ordinarily do not number more than one hundred and fifty men, and that with every other class and craft of mechanics and workers in the building trades industry, no strike conditions exist; that save and except the four crafts mentioned, to wit, granite-cutters, plasterers, plumbers and brick layers, no strike conditions have existed in the city of San Francisco since about September, 1921.

XXXI

These defendants further allege that not only has business not been impeded nor commerce restrained, but, on the contrary, as the result largely of opening San Francisco to competition in labor as well as materials, during the year 1922 the building construction work in San Francisco exceeded that for the year 1921 by about one hundred and fifteen per cent, and that during the first four months of this year the same building boom and development has been maintained. That the month of May, 1923, showed a large excess of building operations over the month of May, 1922. That building and business, and therefore the interstate shipment of goods and materials for buildings in San Francisco has been stimulated, developed and increased by reason of the open shop conditions obtaining during that time in the city of San Francisco.

XXXII

These defendants allege that the Master Plumbers' Association of San Francisco is a voluntary corporation, organized under the laws of the State of California for similar purposes to those of the [fol. 34] Builders' Exchange, except that its activities are confined to those engaged in the building business. That among other things, it is organized for the purpose of aiding and facilitating in the plumbing work, gathering and disseminating information concerning the same, and adopting reasonable, proper rules and regulations for the conduct of plumbers and for the disciplining thereof. That none of said rules or regulations provides for or permits collusive bidding, or fixes or attempts to fix prices for which said work shall be done. That said Master Plumbers' Association, as such, is not engaged in any business, and does no business, and lets or takes no contracts, and buys or sells no building material supplies of any kind.

XXXIII

These defendants allege that during the strikes hereinbefore referred to, the Builders' Exchange did maintain a system or bureau thru and by means of which all members of the Builders' Exchange and others might be informed as to the manner in which different contractors and sub-contractors were operating their business, to wit, whether the same was exclusively closed shop union, or whether the same was open shop. That in connection therewith, so-called permits were issued to all persons operating on the open shop basis; that is to say, to all contractors and sub-contractors who did not discriminate against non-union men; while permits of the Builders' Exchange were withheld or refused from such contractors or sub-contractors as refused to employ union men of any kind.

These defendants allege, however, that said permit system was operated by said Builders' Exchange in the City and County of San Francisco for the benefit and information of members and others residing in the City and County of San Francisco and for the facilitation of business within the City and County of San Francisco, and no attempt has ever been made to restrain or interfere with [fol. 35] or impede the shipment from other states or from foreign nations to the State of California of any building materials or supplies of any kind. That said permit system is operated by said Builders' Exchange for the purpose of making effective its rule and regulation in support of the open shop plan of doing building work. That under the rules and regulations of said Builders' Exchange its members were required to operate upon the open shop plan as hereinbefore defined, and, as a means and method of making effective said open shop plan in San Francisco, said Builders' Exchange issued certificates or permits to persons doing building work or repairing work in San Francisco, thus enabling the members of the Builders' Exchange of San Francisco to know before making any contracts with such persons whether or not they were operating upon the open shop plan. That said permits were issued solely for the purpose of regulating open shop labor conditions upon the buildings of San Francisco and have nothing to do whatsoever with interstate trade or commerce.

XXXIV

These defendants deny that they are or ever have restrained or attempted to restrain a large and important or any part of the trade and commerce between other states of the United States or foreign nations or other territories of the United States and the State of California, and that they have restrained or attempted to restrain interstate commerce of any kind or character.

Wherefore, these defendants pray that the bill of complaint of complainant, filed herein, be dismissed, and that these defendants be dismissed with their costs.

Industrial Association of San Francisco, by H. B. Allen, Sec'y. Max J. Kuhl, Attorney for Defendants Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Henry Cowell Lime and Cement Co., Gladding McBean & Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean, W. P. Fuller & Co., Crane Co.

[fol. 36] [File endorsement omitted.]

Jurat showing the foregoing was duly sworn to by H. B. Allen, omitted in printing.

[fol. 37] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

APPEARANCE OF DALZIEL MOLLER CO., MCNEAR BRICK CO., J. S. GUERIN & CO., OTIS ELEVATOR CO., TACOMA & ROCHE HARBOR LIME CO., BASS HUETER PAINT CO., BETHLEHEM SHIP-BUILDING CORPORATION, LTD., WESTERN LIME & CEMENT CO., AND HOLMES LIME & CEMENT CO., ETC.—Filed June 9, 1923

The undersigned, Max J. Kuhl, hereby formally appears for each and all of the following defendants, to wit: Dalziel Moller Co., McNear Brick Company, J. S. Guerin & Co., Otis Elevator Co., Tacoma & Roche Harbor Lime Co., Bass Hueter Paint Company, Bethlehem Shipbuilding Corporation, Ltd., Western Lime & Cement Co., Holmes Lime & Cement Co.

It is hereby stipulated and agreed by and between the complainant and said above-mentioned defendants that the answer of defendants, Industrial Association of San Francisco, et al., this day filed, in which answer the undersigned Max J. Kuhl appears as attorney for such defendants, shall be and the same hereby is deemed and considered as the joint and several answer of defendants Dalziel Moller Co., McNear Brick Company, J. S. Guerin & Co., Otis Elevator Co., Tacoma & Roche Harbor Lime Co., Bass Hueter Paint Company, Bethlehem Shipbuilding Corporation, Ltd., Western Lime & Cement Co., Holmes Lime & Cement Co., the same as tho these defendants

had for themselves severally and jointly filed said answer for each and all of the purposes of the above-entitled proceeding.

Dated June 9th, 1923.

John T. Williams, United States Attorney for the Northern District of California. Grove J. Fink, Special Assistant to the U. S. Attorney. Augustus T. Seymour, Assistant to the Attorney General. Henry A. Guiler, Special Assistant to the Attorney General. James Raleigh Kelly, Special Assistant to the Attorney General. Max J. Kuhl, [fol. 38] Attorney for Defendants Dalziel Moller Co., McNear Brick Company, J. S. Guerin & Co., Otis Elevator Co., Tacoma & Roche Harbor Lime Co., Bass Hueter Paint Company, Bethlehem Shipbuilding Corporation, Ltd.

It is so ordered: M. T. Dooling, Judge.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

ANSWER OF BUILDERS' EXCHANGE OF SAN JOSE—Filed June 11, 1923

Now comes the Builders' Exchange of San Jose, one of the defendants named in the foregoing complaint, and answering said complaint, alleges; and denies as follows:

1. That this defendant is an unincorporated association of persons, firms and corporations who are engaged in the building industries in Santa Clara County, California, and this defendant denies that either itself, or any of its members, have, or did at any time, or now do, or threaten to, engage in any conspiracy, or combination, or understanding of any kind, either among or with any other persons, firms, corporations or associations, whether defendants herein, or otherwise, to restrain trade or commerce in building material, or any other material, either among the separate States of the United States, or with foreign nations, or at all, or in violation of the Act of July 2nd, 1890 (26 Stat. 208-209) or Acts amendatory thereof, or supplemental thereto; and this defendant denies that it, or any of its members, by any means or methods, or in furtherance of any conspiracy, or at all, have agreed to refuse to sell, or have refused to permit others to sell to purchasers, prospective or otherwise, any building materials unless such purchasers, or prospective purchasers, agreed to employ a foreman and at least fifty per cent, or any other per cent, of the labor, skilled or unskilled, on the buildings which they desired to erect, who were not in any way affiliated with, or members of any Labor Union, so-called, or to assent to carry out or carry out or be bound by the American Plan, so-called, as defined

in said complaint, or at all. But, in that behalf this defendant alleges, that by resolution adopted at a members' meeting of this defendant, held in February, 1922, it was resolved that from that time forward said Builders Exchange, and its members, would em-[fol. 40] ploy such artisans and workmen in the building trades, regardless of whether such artisans or workmen were, or were not, affiliated with any Labor Union, and that its members would not sell building material to any person who discriminated against non-union artisans and workmen by refusing to employ any artisan or workman unless he was a member of the Labor Union.

2. This defendant denies that it, or any of its members, have engaged in collusively bidding, or refraining from bidding against each other, for the furnishing of any building material, or for the erection of any building or buildings, or parts thereof, for the purpose of enhancing the price thereof, or to prevent competitors from obtaining the contract therefor, or for any other purpose, or at all; but, on the contrary, members of this defendant have always freely bid in competition against each other, and have made no attempt to prevent others not members of defendant from freely bidding.

3. Denies that this defendant, or any of its members, have agreed to determine, or have determined arbitrarily, or at all, the persons or corporations, or others, who should engage in the furnishing of building materials, or in the construction of buildings, or parts thereof.

4. This defendant denies that it, or its members, have coerced, or intimidated, or prevented by threats, or otherwise, or have attempted to do so, others from engaging as competitors in the business of constructing buildings, and parts thereof, or from furnishing building materials therefor.

5. Denies that this defendant, or its members, have agreed either among themselves, or at all, that no person or corporation, except members of this defendant, or of the Industrial Association, or of any other organization, should engage in the business of erecting buildings, or parts thereof, or of supplying building materials therefor, or using, or causing others to use threats or intimidation to keep competitors, potential or otherwise, or at all, from engaging in said business.

[fol. 41] 6. This defendant denies that it or its members, have agreed upon, or fixed arbitrarily the wages of foremen, workmen and laborers, skilled or otherwise, employed in or about buildings, or parts thereof, to enhance their profit or profits on any particular job or jobs; but on the contrary this defendant alleges that it has adopted a minimum scale of wages to be paid artisans and laborers, and have agreed among themselves that they would not pay such artisans or laborers a less sum per day than said scale, but that they were free to pay any artisan or laborer as much over said minimum wages as in the judgment of the employer such artisan or laborer's services might be worth.

7. This defendant denies that it, or any of its members, have agreed to fix, or have fixed arbitrarily, or at all, the person or persons who shall be employed as foremen, laborers or workmen, skilled or unskilled, in or about the construction of any building, or parts thereof; but, on the contrary this defendant and its members have insisted upon the right of each to employ any foreman or laborer or workman that he might desire.

8. Denies that this defendant, or either of its members, have agreed to distribute, or have distributed, secretly or otherwise, among themselves, or to others, or at all, any so-called "green lists" or "black lists," or any lists containing the names of persons, firms or corporations who have at all refused to join in any conspiracy, or to become members of said association, or have agreed to do, or not to do any other thing or at all.

9. Denies that this defendant, or any of its members, have coerced or agreed to coerce, or attempted to coerce others from resorting to redress to the Court of this State, or of the United States, by threats of fighting or delaying by long periods any suit which might be brought against them, or by any other means, or at all.

[fol. 42] 10. Denies that this defendant, or any of its members, have agreed with Banks, trust companies, or other moneyed corporations or concerns, to coerce, intimidate, or compel builders or others, whether competitors of defendant, or not, to join in any conspiracy, or to become members of any association, or to agree to abide by any by-laws, rules, resolutions or regulations thereof, or by refusing, or threatening to refuse loans to any persons necessary to start, continue, or to complete their building operations, or by calling in, or threatening to call in at an inopportune or unnecessary time, or at all, loans already made by them on such building operations.

11. Denies that this defendant, or any of its members, have discriminated, or caused others to discriminate against laborers or workmen, skilled or unskilled, engaged or to be engaged in building operations, because said laborers and workmen were affiliated and connected with, and members of any Labor Union, so-called; but, on the contrary this defendant alleges that it, and its members, have always insisted, and do now insist, both in principle and in their practice, that both workmen who are members of Labor Unions, and workmen who are not members of Labor Unions, are equally entitled to employment, and should be employed, regardless of whether they are, or are not, affiliated with any Labor Union.

12. Denies that this defendant, or any of its members, have carried out any agreements, or have made any agreements, or have performed any acts, except such as are hereinbefore admitted, or are threatening, or continue to threaten to do or to perform any such acts, or by any conspiracy, or by any means have restrained, or are continuing to restrain a large, or any part whatever of said trade or commerce.

Wherefore, this defendant prays that it be dismissed with its costs.
S. G. Tompkins, Attorney for said Defendant.

[fol. 43] [File endorsement omitted.]

Jurat showing the foregoing was duly sworn to by W. L. Howe
omitted in printing.

[fol. 44] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

ANSWER OF INDUSTRIAL ASSOCIATION OF SANTA CLARA COUNTY---
Filed June 11, 1923

Now comes the Industrial Association of Santa Clara County, one of the defendants named in the foregoing complaint, and answering said complaint, alleges and denies as follows:

1. That this defendant denies that either itself, or any of its members, have, or did at any time, or now do, or threaten to engage in any conspiracy, or combination, or understanding of any kind, either among or with any other persons, firms, corporations or associations, whether defendant herein, or otherwise, to restrain trade or commerce in building material, or any other material, either among the separate States of the United States, or with foreign nations, or at all, or in violation of the Act of July 2nd, 1890 (26 Stat. 208-209) or Acts amendatory thereof, or supplemental thereto; and this defendant denies that it, or any of its members, by any means or methods, or in furtherance of any conspiracy, or at all, have agreed to refuse to sell, or have refused to permit others to sell to purchasers, prospective or otherwise, any building materials unless such purchasers, or prospective purchasers, agreed to employ a foreman and at least fifty per cent, or any other per cent of the labor, skilled or unskilled, on the buildings which they desired to erect, who were not in any way affiliated with, or members of any Labor Union, so-called, or to assent to carry out or carry out, or be bound by the American Plan, so-called, as defined in said complaint, or at all.

2. This defendant denies that it, or any of its members, have engaged in collusively bidding, or refraining from bidding against each other, for the furnishing of any building material, or for the erection of any building or buildings, or parts thereof, for the purpose of enhancing the price thereof, or to prevent competitors from obtaining the contract therefor, or for any other purpose, or at all; but, on the contrary, members of this defendant have always freely bid in competition against each other, and have made no attempt to prevent others not members of defendant from freely bidding.

3. Denies that this defendant, or any of its members, have agreed to determine, or have determined arbitrarily, or at all, the persons or corporations, or others, who should engage in the furnishing of building materials, or in the construction of buildings, or parts thereof.

4. This defendant denies that it, or its members, have coerced, or intimidated, or prevented by threats, or otherwise, or have attempted to do so, others from engaging as competitors in the business of constructing buildings, and parts thereof, or from furnishing building materials therefor.

5. Denies that this defendant, or its members, have agreed either among themselves, or at all, that no person or corporation, except members of this defendant, or of the Industrial Association, or of any other organization, should engage in the business of erecting buildings, or parts thereof, or of supplying building materials therefor, or using, or causing others to use threats or intimidation to keep competitors, potential or otherwise, or at all, from engaging in said business.

6. This defendant denies that it, or its members, have agreed upon, or fixed arbitrarily the wages of foremen, workmen, and laborers, skilled or otherwise, employed in or about buildings, or parts thereof, to enhance their profit or profits on any particular job or jobs.

7. This defendant denies that it, or any of its members, have agreed to fix, or have fixed arbitrarily, or at all, the person or persons who shall be employed as foremen, laborers or workmen, skilled or unskilled, in or about the construction of any building, or parts thereof; but, on the contrary this defendant and its members have insisted upon the right of each to employ any foreman or laborer or workman that he might desire.

[fol. 46] 8. Denies that this defendant, or either of its members, have agreed to distribute, or have distributed, secretly or otherwise, among themselves, or to others, or at all, any so-called "green lists" or "black lists," or any lists containing the names of persons, firms or corporations who have at all refused to join in any conspiracy, or to become members of said association, or have agreed to do, or not to do any other thing or at all.

9. Denies that this defendant, or any of its members, have coerced or agree to coerce, or attempted to coerce others from resorting to redress to the Court of this State, or of the United States, by threats of fighting or delaying by long periods any suit which might be brought against them, or by any other means, or at all.

10. Denies that this defendant, or any of its members, have agreed with Banks, trust companies, or other moneyed corporations or concerns, to coerce, intimidate, or compel builders or others, whether competitors of defendant, or not, to join in any conspiracy, or to become members of any association, or to agree to abide by any by-laws, rules, resolutions or regulations thereof, or by refusing, or

threatening to refuse loans to any persons necessary to start, continue, or to complete their building operations, or by calling in, or threatening to call in at an inopportune or unnecessary time, or at all, loans already made by them on such building operations.

11. Denies that this defendant, or any of its members, have discriminated, or caused others to discriminate against laborers or workmen, skilled or unskilled, engaged in, or to be engaged in building operations, because said laborers and workmen were affiliated and connected with, and members of any Labor Union, so-called; but, on the contrary this defendant alleges that it, and its members, have always insisted, and do now insist, both in principle and in their practice, that both workmen who are members of Labor Unions, and workmen who are not members of Labor Unions, are equally entitled [fol. 47] to employment, and should be employed, regardless of whether they are, or are not affiliated with any Labor Union.

12. Denies that this defendant, or any of its members, have carried out any agreements, or have made any agreements, or have performed any acts, except such as are hereinbefore admitted, or are threatening, or continue to threaten to do or to perform any such acts, or by any conspiracy, or by any means have restrained, or are continuing to restrain a large, or any part whatever of said trade or commerce.

Further answering said bill in equity, this defendant alleges:

1. That the principal purpose for which this defendant exists is to oppose the restraining of trade in Santa Clara County, and to bring about conditions in said County in particular, and in the United States of America, in general, under which trade would be stimulated and unrestrained.

That before the organization of this defendant association, conditions of business and trade were such in said Santa Clara County that trade and business were greatly restricted and hampered by certain labor Unions, by reason of such labor Unions insisting that no work should be performed in said community by any workman or artisan who was not a member of a Labor Union, and that no material or merchandise should be bought or used except such as was made or produced by workmen belonging to Labor Unions, and such Labor Unions were enforcing their above stated demands by strikes, threats, intimidation, black-lists, boycotts and personal violence. That as a result of such attitude and acts of such labor organizations, trade was being greatly restrained in said Santa Clara County, and elsewhere in the United States of America, and capital was being driven away from said County, and workmen and artisans who were not members of labor organizations were being deprived of employment and the means of livelihood.

That this defendant is composed of several hundred citizens, firms and corporations of Santa Clara County, who associated themselves [fol. 48] together for the purpose of protecting the right of every man to work, regardless of whether he was or was not affiliated

with any labor union, and to protect and foster the right of every merchant or manufacturer to buy or sell commodities regardless of whether the same was produced by union or non-union labor.

That in pursuance of said purposes this defendant, at its own expense, has procured many workmen and artisans, both Union and non-union, for such persons, firms and corporations, who would agree that in employing labor they would not discriminate against either Union or non-union labor; but that this defendant has refused to assist any employer who discriminated against either Union or non-union labor.

That in further pursuance of its said purpose, defendant has used its influence to prevail on merchants to refuse to sell merchandise to such contractors or other employers as operated a closed Union shop, or operated shops closed against Unions.

That defendant has always insisted as a condition of procuring workmen or artisans for any employer, that such workmen and artisans should be paid not less than an amount designated in a certain minimum wage scale adopted by the Builders Exchange of Santa Clara County, but might be paid as much more than such scale as might be agreed on between such employer and employee, and that a day's labor should be eight hours.

That such activities of defendant have not only not restrained trade, but has greatly increased business and trade of every kind in Santa Clara County, and throughout the United States, and has resulted in the disappearance of strikes, and in the restoration of business confidence in said Santa Clara County.

Wherefore, this defendant prays that it be dismissed with its costs.

S. G. Tompkins, Attorney for said Defendant.

[fol. 49] [File endorsement omitted.]

Jurat showing the foregoing was duly sworn to by W. A. Edwards omitted in printing.

[fol. 50] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

APPEARANCE OF PACIFIC PORTLAND CEMENT CO., SANTA CRUZ PORTLAND CEMENT CO., AND P. E. O'HAIR CO., ETC.—Filed June 12, 1923

The undersigned, Max J. Kuhl, hereby formally appears for each and all of the following defendants, to wit: Pacific Portland Cement Co., Santa Cruz Portland Cement Co., and P. E. O'Hair Co.

It is hereby stipulated and agreed by and between the complainant and said above-mentioned defendants that the answer of defendants, Industrial Association of San Francisco, et al., this day filed,

in which answer the undersigned Max J. Kuhl appears as attorney for such defendants, shall be and the same hereby is deemed and considered as the joint and several answer of defendants, Pacific Portland Cement Co., Santa Cruz Portland Cement Co. and P. E. O'Hair Co., the same as tho these defendants had for themselves severally and jointly filed said answer for each and all of the purposes of the above-entitled proceeding.

Dated June 11th, 1923.

John T. Williams, United States Attorney for the Northern District of California. Grove J. Kink, Special Assistant to the U. S. Attorney. Augustus T. Seymour, Assistant to the Attorney General. Henry A. Guiler, Special Assistant to the Attorney General. James Raleigh Kelly, Special Assistant to the Attorney General. Max J. Kuhl, Attorney for Defendants Pacific Portland Cement Co., Santa Cruz Portland Cement Co., P. E. O'Hair Co.

[File endorsement omitted.]

[fol. 51]

IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

OPINION AND ORDER DENYING APPLICATION FOR AN INJUNCTION
PENDENTE LITE—Filed June 19, 1923

The complainant alleges that the defendants, forty of whom are named, and many of those named being aggregations of great numbers of individuals, did for three years last past engage, and are now continuing and threatening to engage in a conspiracy to restrain trade and commerce in building materials in violation of the Act of July 2nd, 1890, and its amendments,—the Act being the one commonly known as the Sherman Act.

An application has been made to the Court for an injunction pendente lite, the application being based upon the verified bill, and a number of supporting affidavits. This application is resisted by the defendants, such resistance being in turn based upon verified answers to the bill and various affidavits in support of the same. A consideration of all these convinces me that if there has been in fact any appreciable interference with interstate commerce resulting from unity of action or purpose on the part of the defendants or any number of them, such interference was not sought, desired or intended, and that there is at present no threatened or prospective injury to such commerce grave enough to warrant the Court to disturb, in advance of a trial, and upon conflicting affidavits the industrial situation existing in San Francisco and neighboring counties for the past three years.

The application for an injunction pendente lite is therefore denied.

M. T. Dooling, Judge.

June 19th 1923.

[File endorsement omitted.]

[fol. 52]

IN UNITED STATES DISTRICT COURT

APPEARANCE OF UNITED STATES GYPSUM CO., ETC.—Filed Oct. 30, 1923

The undersigned, Max J. Kuhl, hereby appears for the defendant United States Gypsum Co.

Dated October 30th 1923.

Max J. Kuhl, Attorney for United States Gypsum Co.

It is hereby stipulated and agreed that the joint and several answer of defendants Industrial Association of San Francisco, et al., may be and hereby is deemed the answer of the defendant United States Gypsum Co., and that each and all of the papers, documents and exhibits filed on behalf of said last named defendants shall be deemed as having been filed on behalf of said United States Gypsum Co., and to all intents and purposes as if said United States Gypsum Co. had originally appeared with said other defendants.

A. T. Seymour, Assistant to the Attorney General. Henry A. Guiler, Special Assistant to the Attorney General. James Raleigh Kelly, Special Assistant to the Attorney General. John T. Williams, United States Attorney for the Northern District of California. H. H. Atkinson, Special Assistant to the United States Attorney. Max J. Kuhl, Attorney for Certain Defendants.

[File endorsement omitted.]

[fol. 53]

IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

OPINION AND ORDER TO ENTER A DECREE ENJOINING DEFENDANTS FROM CERTAIN ACTIVITIES—Filed Nov. 9, 1923

John T. Williams, Esq., United States Attorney, A. T. Seymour, Esq., Assistant to the Attorney General, Henry A. Guiler, Esq., Special Assistant to the Attorney General, James Raleigh Kelly, Esq., Special Assistant to the Attorney General, and H. H. Atkinson, Esq., Special Assistant to the United States Attorney, Attorneys for the United States.

Max J. Kuhl, Esq., Attorney for certain defendants.

This is an action in equity to restrain the defendants from further executing an alleged conspiracy in restraint of interstate and foreign commerce and to dissolve certain of the alleged conspirators for the more thorough attainment of the objects of the suit. The defendants named are about forty in number, among them the Builders' Exchange and the Industrial Association of San Francisco, together with corporations, individuals and partnerships belonging to each. The evidence was presented in the form of many voluminous affidavits, letters and records in addition to a transcript of the testimony taken in the State Court upon a prosecution of the defendants for claimed violations of the Cartright Act. From all this mass of evidence, much of it contradictory, certain facts stand clearly forth. The first is that the defendants are acting in concert for the purpose of putting into effect and maintaining what is by them designated the "American Plan" in the building industry in San Francisco and some of its neighboring counties. The American Plan contemplates the employment of Union and Non-Union men in equal proportions with a non-union foreman on each job. With the merits or demerits of this plan, as with the recurring conflicts between employers and labor unions, this Court, acting within its [fol. 54] jurisdiction, cannot lawfully be concerned. It is only when either side contravenes some Federal law, that the power of the Court may be invoked, and then only to such extent as may be necessary to prevent such contravention or to punish those involved in it. The purpose of the defendants therefore in so far as it may be sought or attained without running counter to the Federal laws cannot be interfered with by a Federal Court. But if even in attaining an end with which the Court cannot concern itself, such means are employed as the Federal laws condemn, the Court will, in the exercise of its lawful power, enjoin or dissolve as the necessities of the case may require. And this brings us to the second fact that the evidence clearly shows, and that is that the so-called permit system is the principal means by which the concerted action of the defendants is rendered effective. Under this system no one can purchase the building materials covered thereby without obtaining a permit from the permit bureau of the Builders' Exchange and no one can secure such permit who will not pledge himself to run his job on the American plan. Under the permit system were first placed cement, lime, plaster, ready mixed mortar, rock, sand and gravel, common brick, fire and face brick, terra cotta, and all clay products. Defendants disavow any intention to interfere with interstate commerce and claim that these materials were selected because they are produced within the State and were carefully selected in order to avoid such interference. Later, however, by the permit bureau other materials were placed under the permit system several, if not all, of which were produced without the State. It is claimed that as to these the permit was never actually required, but the fact remains that they are on the proscribed list, pursuant to the declaration of the Industrial Relations Committee of the Builders' Exchange in whose hands the machinery for bringing into effect the American plan was placed that "if necessary and as soon as" proper arrange-

ments can be made the permit system will "be extended to all other [fol. 55] materials used in the building trades." A third outstanding fact is that plumbers' supplies which are manufactured for the most part without the State while not directly under the permit system were just as effectively dealt with by the simple process of refusing a permit to purchase the materials that were under the system to any one who employed a "bad plumber," that is to say one who was not operating under the American plan.

When it is stated that nearly all the dealers in building materials and plumbing supplies in San Francisco are members of the Industrial Association the effectiveness of the permit system is at once apparent. Not only were the defendants members of this association bound by the system, but in some cases at least efforts were made more or less successful to prevent manufacturers and dealers without the State from shipping to any one who had not a permit, or could not procure one. It is not necessary, and would serve no useful purpose to recite the evidence showing the three outstanding facts above enumerated, or to follow refined arguments tending to show that interstate commerce has not in fact been interfered with. It is said for instance that no one has ever been by concerted action refused plumbers' supplies except as to such supplies as had already reached the local dealer and been distributed among his wares, thus ceasing to be a subject of interstate commerce. Without passing upon the soundness of this contention, although such commerce does embrace the sale of goods after they reach their destination and while they are in the original packages, it is sufficiently answered by the fact that on large jobs the supplies are shipped directly from outside the State to the contractor, although ordered through the local dealer.

We have then briefly stated the following situation:

1. A concert of action to maintain the American plan.
2. The use of the permit system as a means to that end.
3. The placing under the permit system of articles not manufactured or produced within this state, but which come in interstate commerce from without the State.

[fol. 56] 4. The requirement that a contractor shall employ only "good plumbers" before he can obtain a permit though plumbers' supplies are not directly under the permit system and come for the most part from without the State and are shipped directly to the contractor on large jobs.

However little intended to interfere with interstate commerce as claimed by the defendants the result of their concerted action is such an interference therewith as under the Sherman Act cannot be tolerated. The Court, however, has no desire to go further in curbing their activities than the protection of such commerce requires.

The defendants will not be dissolved nor their general activities interfered with, but a decree will be entered enjoining them from requiring any permit for the purchase of materials or supplies pro-

duced without the State and coming here in interstate commerce, or for making as a condition for the issuance of a permit any regulation that will interfere with the free movement of plumbers' or other supplies produced without the State. They will also be enjoined from attempting to prevent or discourage any person without the State from shipping goods to any person whatever within the State.

If this decree be complied with in good faith by defendants their other activities will not be disturbed, but to insure such compliance the Court will reserve the right hereafter so to modify the decree to be entered as to include the dissolution of certain of the defendants if such dissolution be necessary, and the plaintiff will be accorded the right upon a proper showing to apply for such relief at the foot of the decree.

November 9th, 1923.

M. T. Dooling, Judge.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT
(Title of Court and Cause)

ORDER OVERRULING OBJECTION TO COMPLAINT, ETC.—Filed Dec. 19, 1923

It is ordered that all objections to the sufficiency of the complaint be and the same are hereby overruled.

It is also ordered that the motion to exclude all evidence concerning the so-called "San Jose" incidents be and the same is hereby denied.

The defendants are allowed an exception to each of the above orders.

December 19th, 1923.

M. T. Dooling, Judge.

[File endorsement omitted.]

[fol. 58] IN UNITED STATES DISTRICT COURT
(Title of Court and Cause)

FINAL DECREE—Filed and entered Dec. 19, 1923

All the defendants herein having been served with process, the default of those who have failed to appear will be entered and decree taken pro confesso against them. The remaining defendants having

appeared and the Court having jurisdiction of the person of all the defendants, and the cause having been tried and decided, and it appearing that the defendants have been guilty of a conspiracy in restraint of interstate and foreign commerce in such manner and to such extent as is set forth in the opinion of this Court filed November 9th 1923, now therefore in accordance with said Opinion, it is ordered, adjudged and decreed as follows:

I

That the said defendants and each of them, and their members, officers, agents, servants and employees, and all persons acting under, through, by or in behalf of them, or any of them, or claiming so to act, be and hereby are perpetually enjoined, restrained and prohibited, directly and indirectly, individually and collectively, from

(a) Requiring any permit for the purchase, sale, or use of building materials or supplies produced without the State of California and coming into said State of California in interstate or foreign commerce.

(b) Making as a condition for the issuance of any permit for the purchase, sale or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without said State of California.

(c) Attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within said State of California.

[fol. 59] (d) Aiding, abetting or assisting, directly or indirectly, individually or collectively, others to do any or all of the matters or things herein set forth.

II

That jurisdiction of this Court be and is hereby retained by the Court, and in the event that defendants do not comply in good faith with this decree, complainant is accorded the right upon a proper showing to apply for further relief at the foot hereof.

III

That the complainant have and recover of the defendants the costs in this cause expended, for which let execution issue.

Dated San Francisco, Calif., December 19th 1923.

M. T. Dooling, Judge United States District Court.

[File endorsement omitted.]

[fol. 60]

IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

STIPULATION AND ORDER AS TO APPEARANCE AND ANSWER OF
THOMAS W. SIMMONS & Co.—Filed Jan. 3, 1924

It is hereby stipulated by and between the above named complainant and Thomas W. Simmons & Company, a California corporation, one of the defendants herein, that the answer of The Industrial Association of San Francisco heretofore prepared and filed by Max Kuhl, attorney for said defendant, shall be deemed the appearance and answer of said Thomas W. Simmons & Company in the above entitled action.

Dated: June 29th, 1923.

John T. Williams, Augustus T. Seymour, Henry A. Guiler,
Grove J. Fink, James Raleigh Kelly, Thomas W. Simmons & Company, by Arthur L. Erb, Attorney-in-fact.

Approved Jan. 3rd, 1924. W. H. Hunt, Judge.

[File endorsement omitted.]

[fol. 61]

IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

APPEARANCE OF DEFENDANTS NEPHI PLASTER & MANUFACTURING
Co., WOLVERINE BRASS WORKS, GRINNELL Co., INC., AND GRINNELL
Co. OF THE PACIFIC, INC., ETC.

It is hereby stipulated and agreed that the joint and several answer of the defendants Industrial Association of San Francisco, et al., may be and is deemed the answer of the defendants Nephi Plaster & Manufacturing Co., Wolverine Brass Works, Grinnell Co. Inc., and Grinnell Co. of the Pacific, Inc., and that each and all of the papers, documents and exhibits filed on behalf of said defendants Industrial Association of San Francisco, et al., shall be deemed as having been filed on behalf of said Nephi Plaster & Manufacturing Co., Wolverine Brass Works, Grinnell Co. Inc., and Grinnell Co. of the Pacific, Inc., to all intents and purposes as if said Nephi Plaster & Manufacturing Co., Wolverine Brass Works, Grinnell Co. Inc., and Grinnell Co. of the Pacific, Inc., had originally appeared with said other defendants.

It is further hereby stipulated and agreed that the default or defaults of the defendants Nephi Plaster & Manufacturing Co., Wolverine Brass Works, Grinnell Co. Inc., and Grinnell Co. of the Pacific,

Inc., in the above-entitled cause may be set aside and that said defendants shall be subject to said final decree of the above-entitled Court made, entered and filed on December 19, 1923, as if they had personally appeared at the trial of said cause.

A. T. Seymour, Assistant to the Attorney General. Henry A. Guiler, Special Assistant to the Attorney General. J. Raleigh Kelly, Special Assistant to the Attorney General. John T. Williams, United States Attorney for the Northern District of California. Harry H. Atkinson, Grove J. Fink, Special Assistants to the United States Attorney. Max J. Kuhl, Attorney for Certain Defendants.

Approved: Wm. H. Hunt, Judge.

[fol. 62] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

ORDER SETTING ASIDE DEFAULTS, ETC.—Filed Jan. 31, 1923

Upon reading the within and foregoing stipulation and upon motion of Max J. Kuhl, attorney for Nephi Plaster & Manufacturing Co., Wolverine Brass Works, Grinnell Co. Inc., and Grinnell Co. of the Pacific, Inc., and good cause appearing therefor,

It is hereby ordered that the defaults of the defendants Nephi Plaster & Manufacturing Co., Wolverine Brass Works, Grinnell Co. Inc., and Grinnell Co. of the Pacific, Inc., be and the same are hereby set aside and that the decree of this Court made, entered and filed on the 19th day of December, 1923 shall have the same force and effect as to these defendants as if they had personally appeared at the trial of said cause.

Dated January 31, 1924.

Wm. H. Hunt, Judge.

[File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

NOTICE OF PETITION FOR APPEAL AND PETITION FOR ORDER SUSPENDING INJUNCTION DURING PENDENCY OF APPEAL—Filed February 7, 1924

To the complainant above-named and to Messrs. John T. Williams, Henry A. Guiler, A. T. Seymour, James Raleigh Kelly, H. H. Atkinson, and Grove J. Fink, its attorneys:

You and each of you will please take notice that on Monday, the 11th day of February, 1924, or as soon thereafter as Counsel can be

heard, the defendants in the above-entitled cause, through their attorneys, will move the above-entitled Court for an order granting them an appeal from an order and decree of the above-entitled Court made and entered on the 19th day of December, 1923, in the above-entitled matter, to the Supreme Court of the United States, and will also move the above-entitled Court for an order suspending the injunction granted in said decree during the pendency of said appeal.

Said motions will be made in the Southern Division of the United States District Court for the Northern District of California, Third Division, and will be based upon all the records, papers and proceedings in said matter.

Dated February 6, 1924.

Max J. Kuhl, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co. Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean, Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. S. G. Tompkins, Attorney for Industrial Association of Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose.

[fol. 64]

Received a copy of the within and foregoing notice of petition for appeal and petition for order suspending injunction during pendency of appeal, this 6th day of February, 1924.

C. T. Seymour, Henry A. Guiler, James Raleigh Kelly, H. H. Atkinson, John T. Williams, Grove J. Fink, Attorneys for Complainant.

[File endorsement omitted.]

[fol. 65]

IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

ORDER DESIGNATING C. F. ELDRIDGE AS ATTORNEY FOR CERTAIN DEFENDANTS IN PLACE AND STEAD OF MAX J. KUHLE, DECEASED—
Filed March 21, 1924

It appearing to the Court that Max J. Kuhl, the attorney of record for defendants, Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co. Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman and Atholl McBean, in the above-entitled action, died on the 17th day of February, 1924; and

It appearing that said defendants have duly authorized and appointed C. F. Eldridge to act for and on their behalf as attorney of record in the above-entitled matter, in place and in stead of Max J. Kuhl; and

C. F. Eldridge having appeared as attorney for the aforesaid defendants,

It is hereby ordered that C. F. Eldridge be and he is hereby designated as attorney of record for defendants, Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master [fol. 66] Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co. Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford,

William P. Goss, John Doe Furman, and Atholl McBean, in place and in stead of Max J. Kuhl.

Bourquin, Judge of the District Court.

Dated March 21, 1924.

[File endorsement omitted.]

[fol. 67]

IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

APPEARANCE OF C. F. ELDRIDGE AS ATTORNEY FOR CERTAIN DEFENDANTS IN PLACE AND STEAD OF MAX J. KUHL, DECEASED—
Filed March 21, 1924

Max J. Kuhl, the attorney of record in the above-entitled suit for the following named defendants, to wit, Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co. Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean, having died on the 17th day of February, 1924;

And said defendants having authorized C. F. Eldridge to appear for them as attorney of record in the above-entitled suit in place and stead of said Max J. Kuhl;

Now comes C. F. Eldridge and appears in place and instead of said Max J. Kuhl as attorney of record for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement [fol. 68] Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co. Inc., Grinnell Co. of the Pacific

Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquarson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, and Atholl McBean.

C. F. Eldridge.

Dated March 18, 1924.

We hereby acknowledge and accept service of the within and foregoing document and consent to the appearance and designation of C. F. Eldridge as attorney of record for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co. Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co. Inc., Grinnell Co. of The Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman and Atholl McBean, [fol. 69] in place and stead of Max J. Kuhl.

Henry A. Guiler, Special Assistant to the Attorney General; Grove J. Fink, Special Assistant to the United States Attorney for the Northern District of California; Harry H. Atkinson, Special Assistant to the Attorney General; John T. Williams, United States Attorney for the Northern District of California; James Raleigh Kelly, Special Assistant to the Attorney General; A. T. Seymour, Assistant to the Attorney General, Attorneys for Complainant.

Dated March 18, 1924.

[File endorsement omitted.]

[fol. 70]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of the Evidence

This cause came on for trial before the above-entitled Court, Honorable M. T. Dooling, Judge presiding, on the 9th day of Oc-

tober, 1923, and after the introduction of certain affidavits, stipulations and evidence, the trial was continued until the 30th day of [fol. 71] October, 1923, at which time further affidavits, stipulations and evidence were introduced, and said cause was continued until the 31st day of October, 1923.

Messrs. John T. Williams, United States Attorney for the Northern District of California, Henry A. Guiler, Special Assistant to the Attorney General, Augustus T. Seymour, Assistant to the Attorney General; James Raleigh Kelly, Special Assistant to the Attorney General; and H. H. Atkinson, Special Assistant to the United States Attorney, appeared for complainant, United States of America.

Max J. Kuhl, Esq. appeared on behalf of defendants, Industrial Association of San Francisco; Builders' Exchange of San Francisco; Master Plumbers' Association; George H. Tay Co.; Pacific Portland Cement Co.; Henry Cowell Lime and Cement Co.; Santa Cruz Portland Cement Co.; Tacoma and Roche Harbor Lime and Cement Co.; United States Gypsum Co.; J. S. Guerin and Co.; Holmes Lime and Cement Co.; Gladding, McBean and Co.; McNear Brick Company; Western Lime and Cement Co.; Otis Elevator Co.; P. S. O'Hair Co.; W. P. Fuller & Co.; Bass Heuter Paint Co.; Dalziel Moller Co.; Crane Company, Inc.; Bethlehem Shipbuilding Co.; William H. George; Emil Hogberg; Joseph B. Keenan; J. D. McGilvray; R. J. H. Forbes; Alex Mennie; T. G. Berg; James H. Pinkerton; Charles W. Gompertz; D. J. Sullivan; George T. Bowen; George R. Perkins; Marion D. Cohn; J. J. Neal; D. B. Farquharson; C. S. Allred; John Viller; Lawrence E. Crawford; William P. Goss; John Doe Furman, and Atholl McBean.

S. G. Tompkins, Esq., appeared on behalf of defendants Industrial Association of Santa Clara County, and the Builders' Exchange of San Jose.

Messrs. Breuner and Erb appeared on behalf of defendant Thomas W. Simmons & Company, sued herein as William Simmonds & Co.

Thereupon stipulations were executed between counsel for various parties as will hereinafter appear, and testimony of witnesses taken, objections thereto made, motions to strike out made, and rulings as [fol. 72] hereinafter set forth.

STIPULATION RE EVIDENCE

The following stipulation was executed by counsel appearing for the complainant and for the defendants:

It is hereby stipulated and agreed by and between the parties hereto, by and thru the undersigned as their respective attorneys, as follows, to wit:

(1) That all of the witnesses who were sworn and testified in the trial of the case of the People of the State of California vs. William H. George, et al., Number 12795, in the Superior Court of the State of California, in and for the City and County of San Francisco, Department No. 12, would, if sworn in this case, testify as they did in the former case in the state courts as shown by a copy of the official tran-

script thereof to be filed herewith; and any of the parties to this stipulation may in lieu of producing said witnesses, offer the transcript of the testimony they gave in said former case.

(2) That either or any of the parties to this stipulation may in lieu of producing the original exhibits, offer the exhibits introduced in evidence in the said criminal trial in the said courts as they appear in the transcript.

(3) That any of the witnesses who testified in the preliminary examination in the criminal case entitled *People of the State of California vs. William H. George, et al.*, said preliminary examination being held before Honorable Daniel S. O'Brien, presiding, would, if they were produced and sworn in this case, testify as they did upon said former preliminary examination, and either of the parties to this stipulation may, in lieu of producing said witness, offer the testimony that said witnesses gave at said previous preliminary examination from the official transcript of said testimony.

(4) That either or any of the exhibits introduced in evidence at said preliminary examination, instead of being originally produced in this court, may be offered by reading from said official transcript of said preliminary examination the copies thereof that appear in said transcript.

(5) That either or any of the persons or affiants who subscribed and swore to any of the affidavits used by any of the parties to this stipulation on the application for a preliminary or temporary injunction in this case, would, if called as witnesses, testify to the same facts that they testified to in their respective affidavits; and either of the parties hereto may, in lieu of producing said original witnesses, offer in evidence as their testimony upon the trial of this case the affidavits subscribed to by them.

(6) It is further stipulated that either of the parties hereto may offer in evidence any additional affidavits that they may desire, and that said affidavits may be offered in lieu of producing the witnesses themselves.

(7) It is stipulated and agreed that the purpose of this stipulation is to facilitate the trial of the above-entitled case and to dispense with the necessity of producing original records and subpoenaing a large number of witnesses. But all of said testimony and all of said exhibits, portions of records and affidavits to be offered shall be subject to only the three following objections: (1) That any or all matters contained therein (specifying the objectionable matters) are immaterial; or, (2) that they are hearsay; or (3) that the evidence does not show that the San Jose defendants have participated in the conspiracy charged against the San Francisco defendants and that, therefore, any acts committed by the San Jose defendants should not be admitted in evidence as against the San Francisco defendants.

Except as to the three said objections, all said testimony, exhibits, portions of records and affidavits are to be used and considered to the

same extent and with the same effect as if the parties giving such testimony and/or making such affidavits were duly sworn and examined and testified that way, and that said exhibits or records or documents referred to in said testimony or said affidavits were duly identified.

TESTIMONY OF WITNESS GRANT R. BENNETT ON BEHALF OF COM-
PLAINANT

I am and was at all times herein mentioned attorney and counsel for the "Building Trades Council of Santa Clara County.

On or about Monday, May 22, 1922, at the Palace Hotel in San Francisco, Cal., together with J. F. Cambiano, secretary of "Building Trades Council of Santa Clara County," I met Mr. Thomas W. Simmons. I asked Mr. Simmons at that time and place if he had not been in San Jose on the preceding Friday; to which he said "Yes;" I asked him for what purpose, to which he replied that some time shortly prior to coming to San Jose he had received a communication from Mr. Max Kuhl of the Industrial Association of San Francisco, asking him—Thomas W. Simmons—to meet the said Max Kuhl at the Hotel Vendome in San Jose about seven thirty on this Friday night, and that, in pursuance of this agreement, he, the said Thomas W. Simmons, had come to San Jose and had gone to the Hotel Vendome at the said hour and inquired there of the clerk whether there was any person expecting him, the said Thomas W. Simmons. That thereupon Samuel Tompkins, who, as he was afterwards informed by the said Tompkins and others, was then president of the Industrial Association of Santa Clara County, stepped forward and said: "Are you Mr. Simmons?" to which Mr. Simmons replied that he was, and thereupon the said Samuel Tompkins said: "I am here representing Max Kuhl, of the Industrial Association of San Francisco, and I want to talk with you." That at that time there was accompanying Samuel Tompkins a certain Charles M. O'Brien who, as said Thomas W. Simmons was afterwards advised, was also connected with the Industrial Association of Santa Clara County and very active and assiduous in executing its plans and policies; that he was also accompanied by a certain Mr. Palmer who, as the said Thomas W. Simmons was afterwards advised, was the secretary of the Industrial Association of Santa Clara County; that the said Thomas W. Simmons understood from these three gentlemen that they were acting officials for the Industrial Association of Santa Clara County, and in conjunction and cooperation with the Industrial Association of San [fol. 74] Francisco, and that the said Samuel Tompkins was acting under advice from the said Max Kuhl; that he was ordered to advise the said Thomas W. Simmons that he must secure the return of two carloads of cement theretofore sold by the said Simmons to J. F. Cambiano, secretary of the "Building Trades Council of Santa Clara County;" and that the said Thomas W. Simmons stated that he had finally agreed with the said Tompkins, O'Brien and Palmer to attempt to secure from the said J. F. Cambiano the return of the said cement;

that the said Thomas W. Simmons at that time said in the presence of this affiant and J. F. Cambiano that he had agreed with the said Tompkins, O'Brien and Palmer at the meeting at the Hotel Vendome in San Jose that he would attempt to secure the return of the cement.

In this conversation in the Palace Hotel of San Francisco or about Monday, May 22, 1922, the said J. F. Cambiano informed the said Thomas W. Simmons that he would under no circumstances consent to the return of the cement already delivered, that he would insist upon the delivery of some other cement, amounting to two carloads which the said Thomas W. Simmons had agreed to deliver to the said J. F. Cambiano. At that time the said Thomas W. Simmons stated that he had been advised by conversation, direct by telephone, that his business would be ruined if he continued to carry out any business relations with the union labor people in Santa Clara County; that he had been told by several of his customers that they could not deal with him if he continued in these relations; that he had been informed that his present bank facilities would be curtailed and stopped; that he had made up his mind to resist all those who had threatened to put him out of business if he furnished building materials to the labor unions in San Jose and Santa Clara County; that he would like to obtain the patronage of all the labor union associations in the State of California, and to that end he would furnish, through local Councils, Belgium cement in whatever amount they might order; that he was prepared to make the first shipment thirty-five days after the receipt of the first order and thereafter every two weeks; that the said Thomas W. Simmons was informed by both J. F. Cambiano and this affiant at that time that he could not make any arrangements for any other building associations except the "Building Trades Council of Santa Clara County." He further said at that time that he had been threatened and had been told that, if he would refrain from obtaining any more cement for the said unions and would cancel this order, that certain business and financial associations in San Francisco would restore him to their favor and reestablish him in their business confidence, or words to that effect.

That this affiant personally knows and is acquainted with one Fred Figel, who is and at all of the times herein mentioned was, a duly appointed and acting agent in San Jose, California, for the Pacific Portland Cement Company, whose principal offices are located at 827 Pacific Building, San Francisco, California, and which is engaged in the manufacture and sale of cement and hardwall plaster, and has its hardwall factory at and manufactures Empire Brand plaster at Mound House, Nevada. That on or about the twenty-seventh day of June, 1922, this affiant in company with A. J. Mooney and J. F. Cambiano visited the said Fred Figel in his office in the Growers Bank Building, San Jose, California; that the said J. F. Cambiano stated to the said Fred Figel at that time and place that [fol. 75] he desired to purchase forty tons of Empire Brand hardwall plaster from the said Pacific Portland Cement Company, and that

he then and there tendered in payment therefor the sum of One thousand Dollars (\$1,000.00) in lawful currency of the United States of America. That the said Fred Figel then and there in the presence of A. J. Mooney, J. F. Cambiano and this affiant, stated that under instructions received by him from the said Pacific Portland Cement Company he could not and would not sell any plaster to the said J. F. Cambiano or to any union man, or to any person, without a permit from the Industrial Association of San Jose, because an understanding and agreement had been entered into by and between the said Industrial Association and his Company and other dealers and manufacturers of plaster not to sell or deliver any building material to any union labor organization or any contractors employing union labor. The said Fred Figel stated at that time and place in the presence of A. J. Mooney, J. F. Cambiano and this affiant that he was acting under express and direct orders received by him from the said Pacific Portland Cement Company; that the said Fred Figel at this time and place in the presence of A. J. Mooney, J. F. Cambiano and this affiant stated that the said Pacific Portland Cement Company had its hardwall plaster factory at Mound House, Nevada; that its product comes therefrom; that he could fill the order of said J. F. Cambiano by some of the material which he had on hand in San Jose and by shipping the balance from the factory at Mound House, Nevada. The said Fred Figel then and there stated in the presence of A. J. Mooney, J. F. Cambiano and this affiant that he was the agent and representative of the Pacific Portland Cement Company; and, acting under their authority and instruction, he had gone to Watsonville, California, and had stopped the delivery of a carload of cement by the said Pacific Portland Cement Company to the Pajaro Valley Mercantile Company, and that he had directed that the money which had been paid for the said cement should be returned to the purchaser, and that he had done this because he had been informed and believed that the said cement was intended for union workers, which was contrary to the agreement and understanding which had been entered into by the Pacific Portland Cement Company with the other building material dealers and manufacturers of cement, plaster and similar materials.

The said testimony of Grant R. Bennett was admitted in the form of affidavit. Upon presentation thereof Max J. Kuhl, Esq., on behalf of the defendants represented by him, objected to the admission of said affidavit on the ground that the matters set forth therein were immaterial, irrelevant and incompetent and not binding upon the defendants represented by the said Mr. Kuhl; he objected further on the ground that the matters set forth in the testimony of said Grant R. Bennett tended to prove a different conspiracy from the one charged in the bill of complaint; that said testimony tended to prove a conspiracy between certain organizations in the city of San Jose, State of California, with whom the defendants represented by the said Mr. Kuhl had no connection

of any kind and with whom the defendants represented by said Mr. Kuhl were not cooperating or working; that the acts charged against the defendants represented by Mr. Kuhl constituted the acts of a different group of conspirators and a different conspiracy from the conspiracy and conspirators sought to be established and involved in the testimony of said Grant R. Bennett; he further objected upon the ground that said conspiracy sought to be proved by the testimony of said Grant R. Bennett was a minor conspiracy or a minor combination which was not a part of any general plan or combination entered into by all of these defendants, and that therefore the matters sought to be established by the said testimony of Grant R. Bennett were multifarious and in no way involved the defendants represented by Mr. Kuhl. In support of his objection, Mr. Kuhl cited the case of United States vs. Reading Co., reported in 226 U. S. Reports p. 324.

After argument the objection was overruled and an exception noted by Mr. Kuhl and allowed by the court. (Exception No. 1.)

Thereupon Mr. Kuhl made a motion to strike out said testimony of Grant R. Bennett upon each and all of the grounds set forth in his objections to the admission thereof. Said motion was denied and exception taken by Mr. Kuhl and allowed by the court. (Except. No. 2.)

TESTIMONY OF J. F. CAMBIANO ON BEHALF OF COMPLAINANT

I am and at all of the times herein mentioned was the Secretary of the Builders Trades Council of Santa Clara County, an organization of representatives of the Trades Unions and of the Union workmen of said County, and as such Secretary am and was at all of the times herein mentioned engaged as a representative of said Buildings Trade Council of Santa Clara County in securing on its behalf building materials to sell without profit to contractors employing Union labor; Through a representative of the Unit Construction Company of San Francisco, who was building in San Jose, I was referred to one Thomas W. Simmons, the president of the Thomas W. [fol. 77] Simmons & Co., Inc., as a person from whom I could purchase cement. I visited Mr. Simmons on May 13, 1922, and told him that I have been referred to him.

Mr. Simmons told me that he had 110 sacks of cement in the basement of the premises at 240 California Street which he was ready to deliver to me forthwith. I told him that was not enough and that that quantity of cement was not worth carrying away. I told him furthermore that I needed about 8,000 sacks of cement, and that I needed it quickly. He told me that he could not get more than 4,000 sacks of domestic cement, and stated that he would go out and secure that quantity for me and that he would secure the 4,000 sacks of cement for me, or whatever additional quantity I might need by importing the same from Belgium, Europe. I told him that that would be satisfactory. This meeting occurred about 12 o'clock noon. He told me that he would attempt to get for me the 4,000 sacks of

domestic cement and requested me to return in the afternoon. I came back to his office about 2 o'clock p. m. He told me that he had made arrangements to secure for me 4,000 sacks of domestic cement, the same to be delivered in two or three days at one of the San Francisco docks. He further stated that he had obtained this cement from Henry Cowell Lime & Cement Co., #2 Market Street, San Francisco, California. Then he submitted to me two contracts which he had drawn up, which contracts I signed. The reason the two contracts were signed is that one contract was for domestic cement and the other for Belgium cement. A total of 8,000 sacks was to be furnished me, 4,000 sacks of domestic to keep me going until the 4,000 sacks should arrive from Antwerp, Belgium.

Thomas W. Simmons and I went from the latter's office to the American National Bank, southeast corner of California and Montgomery Streets, where I deposited \$3,400.00 on the contract for the domestic cement.

Three or four days after this conversation I received from the Thomas W. Simmons & Co., through the mail two bills of lading each for one carload of cement. These two carloads of cement were delivered to Griffith & Skelly's Warehouse in San Jose, Santa Clara County, the same being the warehouse which was being used by the Building Trades Council of Santa Clara County for the storage of building materials. I caused these two carloads of cement to be unloaded from the cars and to be stored in the warehouse. On the following Friday evening about 8:30 o'clock Mr. Thomas W. Simmons called on me at San Jose and informed me that he was in serious trouble and unless I returned to him the said two carloads of cement he would be put out of business at daylight. I asked him what he meant by that and he said some friends of his—one from the bank and one from the Industrial Association of San Francisco had called on him and told him that unless those two carloads of cement were returned he would be put out of business by daylight and that his credit both locally and abroad would be cut off. When I asked the said Thomas W. Simmons in what way he had been threatened he informed me that they had told him that they would send letters to all those with whom he was doing business both locally and abroad and inform them that he was selling cement to unions and that they should have no dealings with him. I told him that I would not see him ruined and if he would call at my office in the Labor Temple at No. 72 North 2nd Street, San Jose, that I would take up the matter in regard to the return of the cement which he promised to do.

[fol. 78] Monday morning at 8 o'clock Mr. Grant R. Bennett, attorney for the Building Trades Council of Santa Clara County and I were there and met Mr. Thomas W. Simmons. The said Grant R. Bennett asked the said Thomas W. Simmons in my presence why he had come to San Jose on the preceding Friday evening. Thereupon the said Thomas W. Simmons said that he had received a communication from Mr. Max Kuhl of the Industrial Association of San Francisco instructing the said Thomas W. Simmons to meet the said Max Kuhl at the Hotel Vendome in San Jose at about the hour of 7.30

p. m., and that in accordance with the said instructions the said Thomas W. Simmons had come to San Jose and had visited the said Hotel Vendome at the hour designated and had inquired of the Hotel Clerk whether or not any person was waiting there for Thomas W. Simmons. That thereupon Samuel Tompkins, President of the Industrial Association of Santa Clara County, stepped forward and said: "Are you Mr. Simmons" and Mr. Simmons answered that he was, and thereupon the said Samuel Tompkins said: "I am here as the representative of Max Kuhl of the Industrial Association of San Francisco, and I want to speak to you." That the said Samuel Tompkins was then and there accompanied by a certain Mr. Palmer, Secretary of the Industrial Association of Santa Clara County. That the said Samuel Tompkins then and there informed the said Thomas W. Simmons that he had been directed by the said Max Kuhl to instruct the said Thomas W. Simmons that he must secure the return of the said two carloads of cement; and the said Thomas W. Simmons stated further that he had agreed with the said Tompkins, O'Brien and Palmer forthwith to call on affiant and attempt to secure from affiant a return of the said cement. And that the said Thomas W. Simmons further informed affiant and the said Grant R. Bennett that the said Thomas W. Simmons had agreed with the said Samuel Tompkins, O'Brien and Palmer that the said Thomas W. Simmons would meet the said Tompkins, O'Brien and Palmer after he had seen me and report to them affiant's answer. After going over the situation with him I informed Mr. Simmons that under no circumstances would I return the cement which had already been delivered and I assured him that the Building Trades Council of Santa Clara County would stand behind him in this matter. This seemed to give him courage and he declared that he would fight vigorously those who were seeking to put him out of business because he had undertaken to sell cement to the Unions. Thereupon said Thomas W. Simmons suggested that I return with him to San Francisco and talk matters over. This I agreed to do but the said Thomas W. Simmons stated that on second thought he considered it advisable that he should not be seen in San Francisco in my company, and suggested that he would go to San Francisco and that I should follow him and meet him at his room in the Palace Hotel in San Francisco at about half past two in the afternoon. The said Thomas W. Simmons then left my office. Later the said Grant R. Bennett and I left San Jose for San Francisco, and met the said Thomas W. Simmons in accordance with the said arrangement between two and half past two o'clock that afternoon in his room at the Palace Hotel.

The said Thomas W. Simmons then and there stated that since he had made up his mind to fight those who had threatened to put [fol. 79] him out of business if he furnished materials to the unions he wished to obtain the patronage both of the State Building Trades Council of California and of the local Building Trades Councils in the various counties in California, and that if he obtained that patronage he was prepared to furnish to the State Building Trades Council and to the local councils Belgium cement to meet whatever

orders of cement they might give him. And he further stated that if this arrangement could be entered into that he was prepared to make the first shipment of Belgium cement thirty-five days after the receipt of the order, and thereafter every two weeks, explaining that a boat loaded with cement would leave Antwerp, Belgium, every two weeks. I informed the said Thomas W. Simmons that while I could undertake to buy Belgium cement in behalf of the Building Trades Council of Santa Clara County, I could give him no assurance that either the State Building Trades Council of California or any of the local councils would buy Belgium cement from him, informing him further that he would have to take up that matter with the various councils.

A few days after this last conversation I called on the said Thomas W. Simmons at his office at 240 California Street, and he then and there stated to me that if I would accompany him to the said American National Bank he would refund to me, from the deposit made in that bank by me, the amount covering the two carloads of domestic cement which he was unable to deliver. Thereupon I accompanied him to the said bank and he refunded to me the sum of \$1,707.00 from the said sum of \$3,400.00 deposited by me. Thereupon I asked the said Thomas W. Simmons when he would be prepared to make the delivery of the Belgium cement, and he told me that he had cancelled the order for the importation of cement from Belgium. I asked him why he had done this and he said that those who had threatened to put him out of business and ruin him financially if he secured cement for the unions told him that if he would refrain from securing any more cement for the said unions and would cancel this order for Belgium cement they would forgive him and would not seek to injure him in his business and that for that reason he had made up his mind that he would not carry out his agreement to import cement from Belgium and would have nothing further to do with the matter. Thereupon I stated to the said Thomas W. Simmons that I had agreed with him to cancel the contract for local cement in order to save him from prosecution and having done that I felt that I had done enough and that I would hold him to his contract for the importation of cement from Belgium. Thereupon the said Thomas W. Simmons stated—"Well if you want to sue me go ahead and sue me. I am between two fires—on the one hand those who are fighting the unions have threatened me with financial ruin if I have any further dealings with the unions, and on the other hand you are threatening me with suit. Whatever I do it seems that I have a fight on hand." I again asked the said Thomas W. Simmons if he would deliver the cement he had agreed to import from Belgium, but he declared that for the reasons given he could not, and would not carry out his contract to import the said cement from Belgium. The said Thomas W. Simmons and Company have not delivered the said Belgium cement or any part thereof, and no part of the said Belgium cement has been delivered.

[fol. 80] One Fred Figel now is, and at all of the times herein mentioned was a duly appointed and acting agent in San Jose, Cali-

fornia, for the Pacific Portland Cement Company, whose principal offices are located at 827 Pacific Building, San Francisco, California, and which is engaged in the manufacture and sale of cement and hardwall plaster and has its hardwall plaster factory at and manufactures Empire Brand Plaster at Mound House, Nevada; that on the 27th day of June, 1922, I, in the company of Grant P. Bennett, an attorney of San Jose, and A. J. Mooney, visited the said Fred Figel in his office in the Growers' Bank Building, San Jose, California; that then and there I stated to the said Fred Figel that I wanted to buy 40 tons of Empire Brand hardwall plaster from the said Pacific Portland Cement Company, and then and there tendered in payment therefor the sum of One thousand dollars (\$1,000.00) in lawful currency of the United States of America; that then and there the said Fred Figel stated that under instructions received by him from the said Pacific Portland Cement Company he could not and would not sell any plaster to me or to any union man or to any person without a permit from the Industrial Association of San Jose, because and by reason of an understanding and agreement entered into by and between the said Industrial Association and his company and other dealers in and manufacturers of plaster, which said Association was working in conjunction with the Industrial Association of San Francisco; that the said Fred Figel then and there stated further that in so refusing to sell the said plaster as aforesaid he was acting under the express orders and directions received by him from the said Pacific Portland Cement Company; that then and there the said Fred Figel stated further that the said Pacific Portland Cement Company has its hardwall plaster factory where the Empire Brand plaster is manufactured at Mound House, Nevada, and gets its product therefrom; that the said Fred Figel then and there stated further that he had on hand in San Jose, California, some of the Empire Brand plaster and that he could fill the said order of affiant, from the said plaster on hand and by having shipped in from the said Mound House, Nevada, more plaster sufficient to fill the said order; the said Fred Figel then and there stated that as the agent and representative of the said Pacific Portland Cement Company, and acting under their authorization and instructions, he had gone to Watsonville, California, and had stopped the delivery of a carload of cement which had been sold by the said Pacific Portland Cement Company to the Pajaro Valley Mercantile Company, and that he had caused the money which had been paid for the said cement to be returned to the purchaser and that he had done this because he had been informed and believed that the said cement was intended for union workers which was contrary to the agreement and understanding that had been entered into by the Pacific Portland Cement Company with the other building material dealers and manufacturers of cement, plaster and similar materials.

Mr. Kuhl thereupon objected to the admission in evidence of all of the said affidavit of witness J. F. Cambiano appearing before the matters that he testified to in regard to one Fred Figel upon the ground that said matters were incompetent, irrelevant and immaterial

[fol. 81] and multifarious and not binding upon the defendants represented by Mr. Kuhl inasmuch as said matters had to do with a minor or different conspiracy from the one charged by the defendants represented by Mr. Kuhl. Mr. Kuhl repeated each and all of the grounds of objection that he had urged to the testimony of Grant R. Bennett. Said objection was thereupon overruled and an exception taken by Mr. Kuhl and allowed by the court. Thereupon Mr. Kuhl, on behalf of the defendant represented by him, made a motion to strike from the record, or disregard so far as his clients were concerned, said portion of the testimony of J. F. Cambiano upon each and all of the grounds set forth in his objection to the admission thereof. Said motion was denied, whereupon Mr. Kuhl took an exception, which was allowed by the court. (Exception No. 3.)

TESTIMONY OF JOHN COEFIELD ON BEHALF OF COMPLAINANT

"John Coefield, being first duly sworn deposes and says:

That he now is and at all of the times herein mentioned was the General President of the United Association of Plumbers and Steamfitters of the United States and Canada, a voluntary unincorporated Association.

That Crane Co., Inc., now is and at all of the times herein mentioned was a corporation organized and existing under any by virtue of the laws of the State of Illinois, and having its principal place of business in the city of Chicago, State of Illinois, and having also a local agency in the City and County of San Francisco, State of California, owned and controlled by itself for the sale of plumbers' supplies and steamfitters' supplies, manufactured by itself, at various places outside the State of California, and in which said local agency it sells such plumbers' and steamfitters' supplies; that at all times from on or about the 6th day of May, 1922, and until on or about the 1st day of December, 1922, said Crane Co., Inc., refused to sell and would not sell in or to be used in the said City and County of San Francisco or in the territory adjacent thereto any such supplies to any person more than one-half of whose employees are members of labor unions or whose foreman is a member of a labor union, but that during all such times it sold such plumbers' and steamfitters' supplies in the said territory to any person whatsoever at least one-half of whose employees were not members of labor unions and whose foreman was not a member of a labor union; that on or about the 20th day of May, 1922, the said Crane Co., Inc., was notified and informed at its principal place of business in the said City of Chicago, that its said local agency at the said City and County of San Francisco refused to sell and would not sell to any person more than [fol. 82] one-half of whose employees were members of labor unions or whose foreman is a member of a labor union, any plumbers' or steamfitters' supplies whatsoever, whereas, such local agency was selling, without any restrictions, to all other persons engaged in the plumbers' and/or steamfitters' business.

That when so notified and informed the said Crane Co., Inc., then and there stated that it was absolutely in sympathy with the attitude taken by its said local agency in the said City and County of San Francisco in regard to union labor, and in regard to such refusal and to such discrimination against union labor and against firms employing union labor, and that the said Crane Co., Inc., would sustain and back up its said agency in continuing to refuse to sell such supplies to any person more than one-half of whose employees are members of labor unions or whose foreman is a member of a labor union.

That the Wolverine Brass Works, Inc., now is and at all of the times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of Michigan and having its principal place of business at the City of Detroit, State of Michigan, and engaged in the business of manufacturing and selling plumbers' and steamfitters' supplies in said State of Michigan and also in the State of California, and in all places throughout the United States where it has been able to obtain business; and also having a local agency in the City and County of San Francisco, State of California, owned and controlled by itself for the sale of plumbers' and steamfitters' supplies manufactured by itself in the said State of Michigan and in which said local agency it sells such plumbers' supplies.

That at all times from on or about the 6th day of May, 1922, and until on or about the 1st day of December, 1922, said Wolverine Brass Works, Inc., refused to sell and would not sell in or to be used in the City and County of San Francisco, or the territory adjacent thereto, any such supplies to any persons more than one-half of whose employees were members of labor unions or whose foreman was a member of a labor union, but that during all such times it sold such plumbers' and steamfitters' supplies in the said territory to any person whatsoever at least one-half of whose employees were not members of labor unions or whose foreman was not a member of a labor union; that on or about the 20th day of May, 1922, the said Wolverine Brass Works, Inc., was notified and informed at its principal place of business in Detroit, Michigan, that its said local agency in the said City and County of San Francisco refused to sell and would not sell to any persons more than one-half of whose employees were members of labor unions or whose foreman was a member of a labor union, any plumbers' or steamfitters' supplies whatsoever, whereas, such local agency was selling without restrictions to all other persons engaged in the plumbers' and/or steamfitters' business.

That when so notified and informed the said Wolverine Brass Works, Inc., then and there stated that it was absolutely in sympathy with the attitude taken by its local agency in the said City and County of San Francisco in regard to union labor, and in regard to such refusal to sell, and with regard to such discrimination against union labor and against firms employing union labor, and that the said Wolverine Brass Works, Inc., would sustain and back up its said local agency in continuing to refuse to sell such supplies to any person more than one-half of whose employees were members

[fol. 83] of labor unions or whose foreman was a member of a labor union.

That the Grinnell Company, Inc., now is and at all of the times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of Rhode Island and having its principal place of business at the City of Providence, State of Rhode Island; that the Grinnell Company of the Pacific, Inc., is and at all of the times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of California and having its principal place of business at the City and County of San Francisco, State of California; that the said Grinnell Company, Inc., is the owner of all of the capital stock of the said Grinnell Company of the Pacific, Inc., and controls and dominates the said Grinnell Company of the Pacific, Inc., and the officers and the board of directors, and the business policy, and the employees and agents of the said last mentioned corporation, and that the said Grinnell Company of the Pacific, Inc., is the local agent and representative of the said Grinnell Company, Inc., in the said City and County of San Francisco, and deals in, and does business in and with only the supplies and materials furnished and authorized to it by the said Grinnell Company, Inc.; that said Grinnell Company, Inc., is and at all said times was engaged in the business of manufacturing and selling plumbers' and steamfitters' supplies in all the States of the United States; that said Grinnell Company of the Pacific, Inc., was and now is engaged in the business of selling plumbers' and steamfitters' supplies furnished to it by or authorized by the said Grinnell Company, Inc., in and about the said City and County of San Francisco.

That commencing on or about the 6th day of May, 1922, and up to on or about the 1st day of December, 1922, the said Grinnell Company of the Pacific, Inc., has refused to sell and has failed to sell to any person whatsoever more than one-half of whose employees were members of labor unions or whose foreman was a member of a labor union, any such supplies whatever.

That one, F. H. Maynard, is and at all the times herein mentioned was the president and chief executive officer and in the management and control of the said Grinnell Company, Inc., and, as such, has and had control also of the business, operations, policy and management of the said Grinnell Company of the Pacific, Inc.; that said F. H. Maynard has his offices at No. 1 Liberty Street, in the City of New York, State of New York; that on or about the 20th day of May, 1922, affiant notified the said F. H. Maynard by telegram sent to him at his said offices, No. 1 Liberty Street, that said Grinnell Company of the Pacific, Inc., was refusing to sell and was not selling and intended to continue to refuse to sell and to refrain from selling to any persons more than one-half of whose employees are members of labor unions or whose foreman is a member of a labor union any such supplies whatsoever; that said Maynard replied by telegram to affiant that he would investigate and let affiant know the result of his investigation; that said Maynard then and there made no further reply save as aforesaid.

That thereafter and prior to the 20th day of June, 1922, affiant

called upon and conversed with said Maynard at his said offices, No. 1 Liberty Street, and said Maynard told affiant that he had learned from the said Grinnell Company of the Pacific, Inc., at the said City and County of San Francisco, that it was and would be [fol. 84] impossible for the said Grinnell Company of the Pacific, Inc., to operate or to do business in or around the said City and County of San Francisco, unless the said Grinnell Company of the Pacific, Inc., would continue to refuse to sell in or around the said City and County of San Francisco, or for use in or around, or in the vicinity of the said City and County of San Francisco, any supplies whatsoever, to any persons more than one-half of whose employees were members of labor unions, or whose foreman was a member of a labor union, as aforesaid; that then and there the said Maynard further stated to affiant that the said Grinnell Company of the Pacific, Inc., could not and would not sell any such supplies to any person more than one-half of whose employees were members of labor unions or whose foreman was a member of a labor union, and that he, the said Maynard, as well as the said Grinnell Company, Inc., would back up the said Grinnell Company of the Pacific, Inc., in its stand of discrimination against union labor and in refusing to sell, as aforesaid; that, since the last mentioned conversation with the said Maynard, affiant has had several other conversations with the said Maynard concerning the said subject matter, each being substantially to same effect as the conversation hereinabove set out; that the last of said conversations occurred in February, 1923; and that in said conversation in February, 1923, said Maynard told affiant that the said Grinnell Company of the Pacific, Inc., could not sell and would not sell any such supplies to any person more than one-half of whose employees were members of labor unions or whose foreman was a member of a labor union, or to any person who would not employ labor of the kind and character as the big financial interests in and about the vicinity of the said City and County of San Francisco, as represented by the Builders' Exchange of San Francisco and the Industrial Association of San Francisco, should dictate; that the said Maynard stated also in said conversation in February, 1923, as well as in said other conversations with affiant, that it would be impossible for the said Grinnell Company of the Pacific, Inc., to do business or continue in business unless it was willing to and did submit to the restrictions in doing business placed upon it through the said Builders' Exchange of San Francisco and the said Industrial Association of San Francisco.

TESTIMONY OF A. P. ENTENZA ON BEHALF OF COMPLAINANT

A. P. Entenza, being duly sworn deposes and says:

That he is an attorney-at-law, practicing in the City of San Francisco, and elsewhere, with offices at #804 Merchants Exchange Building, San Francisco, California.

Affiant further says, that some months ago he was consulted and retained as attorney-at-law by the firm of H. N. McClure & Company, contractors of the City and County of San Francisco, and that said H. N. McClure & Company, through its manager and agents, complained to affiant of their inability to secure materials from certain concerns in the City of San Francisco because of their failure to produce to such concerns permits from the Industrial Association of San Francisco or the Builders' Exchange, which permits were issued only on compliance with certain requirements of the said Industrial Association and Builders' Exchange having to do with [fol. 85] the non-employment of union labor by the concerns to which such permits were issued.

Affiant further says that in one instance which he remembers the manager and agent of the said H. N. McClure & Company, came to affiant and explained that they had ordered two cars of plaster from the Pacific Portland Cement Company's office on Market Street, San Francisco, California, some time before but had been unable to obtain delivery; that they requested affiant to, and he did, accompany them to the office of the said Pacific Portland Cement Company, where he was introduced to the manager; that then and there the manager of said H. N. McClure Company tendered to the manager of the said Pacific Portland Cement Company, a check or cash in full payment of the price of said two cars of plaster and requested the manager of the said Pacific Portland Cement Company to make delivery of said cars; that the latter informed the manager of the McClure Company in the presence of the affiant, that at that time delivery would be impossible due to so many orders ahead; that thereupon the agent of the H. N. McClure Company said to the manager of the Pacific Portland Cement Company that if he would look over their files, he would ascertain that the order had been placed some time before, and he knew that delivery had been made to other contractors, who had placed orders later than that of the McClure Company; that then the manager of the Pacific Portland Cement Company replied that they would send some plaster to the McClure Company as soon as they got it in, but that he understood that the McClure Company was "in bad" with the Builders Exchange and that he hoped said Company would adjust its differences with said Exchange; that thereupon affiant asked if the McClure Company were properly reinstated in the said Builders Exchange whether said company could secure plaster from the Pacific Portland Cement Company, and the manager of said last named company replied that although orders were numerous, he thought the McClure Company could.

Affiant further says that as they walked out of the office of said Pacific Portland Cement Company, the manager stated again that he hoped that they would adjust their differences with the Industrial Association, calling the Secretary thereof familiarly by name, so that they would be able to obtain the necessary permits.

Affiant further says that on another occasion the said McClure Company consulted affiant about instituting a replevin suit against the Western Pacific Railroad, advising affiant at that time that the

said McClure Company had ordered three carloads of cement from a concern in Nephi, Utah, which cars had been transported to San Francisco and were in the yards of the Western Pacific Railroad to be delivered to the said H. N. McClure Company, but although they had tendered certified check for the amount due for said three carloads of plaster and the freight charges, said Western Pacific Railroad has refused to turn said cars over to them.

Affiant further says that he thereupon telephoned to the Western Pacific Railroad, and, after being referred to two or more different persons, was unable to get in touch with the person reported to be in charge of matters of that nature.

Affiant further says that he assisted the said McClure Company, and that finally, after two days, the said three carloads of cement were turned over to the said H. N. McClure Company; affiant further says that at all other times such cars would be delivered immediately upon tender of amount due.

[fol. 86] AFFIDAVIT OF GEORGE HUGHES ON BEHALF OF COMPLAINANT

George Hughes, being first duly sworn deposes and says: That I am a resident of the City and County of San Francisco, State of California, residing therein at No. 645 Castro Street; That on Tuesday, May 2nd, 1922, I accompanied Antone Lettich to the Muller Plumbing Supply Company and Crane Company both San Francisco firms and heard Mr. Lettich refused plumbing material by both of the aforesaid firms. Affiant further accompanied Antone Lettich to the Grinnell Automatic Sprinkler Company and Mr. Lettich requested some steam fittings and the answer was that they did not have them; That affiant further accompanied Antone Lettich to the Morris Stulstaff Company and the order was then telephoned to the Grinnell Automatic Sprinkler and filled by said company.

AFFIDAVIT OF JOHN F. HOUGHEY ON BEHALF OF COMPLAINANT

John F. Houghey being first duly sworn deposes and says: That on the 28th day of April, 1922, this affiant accompanied by Mr. Anton Lettich called at certain wholesale shops dealing in plumbing supplies and endeavored to place orders for such plumbing supplies; such orders to be paid for in cash at the time of ordering, and gold coin of the United States being offered in payment for such supplies; such firms at that time absolutely refused to accept such orders or deliver said supplies.

AFFIDAVIT OF A. LETTICH ON BEHALF OF COMPLAINANT

A. Lettich, being first duly sworn deposes and says:

That he now is and at all times herein mentioned was, a Plumbing and Heating Contractor, doing business in the City and County

[fol. 87] of San Francisco, State of California, with his place of business, or shop, located at #365 Fell Street, in said City of San Francisco;

That between the dates of April 28, 1922, and November 23, 1922, affiant on numerous occasions was in need of supplies and materials for his different jobs, and endeavored to purchase said materials and supplies from the various Wholesale Supply houses in the City of San Francisco, but was refused such materials and supplies by the following firms:

H. Mueller Manufacturing Company.
 Crane & Company.
 R. W. Kinney Co.
 Dalziel Moller Co.
 M. Stulsaft Company.
 Holbrook, Merrill & Stetson.
 Wolverine Brass Works, Inc.
 Grinnell Company of the Pacific.
 Western Supply Company.
 Mark-Lally Co.
 Haines, Jones & Cadbury Co.
 Richmond Sanitary Company.
 Geo. H. Tay & Co.

That the first of said firms that refused affiant, was the H. Mueller Manufacturing Company; that the date of said refusal was April 28, 1922; that on said 28th day of April, 1922, affiant called on the said H. Mueller Manufacturing Company, and saw Mr. Thomas Leary, the Manager of said firm; that affiant told Mr. Leary he wanted to buy some Slip Joint Angle Valves, and Mr. Leary thereupon informed affiant that they were running on strictly American Plan, and they refused to sell the affiant the supplies requested; that affiant offered to pay cash for what he wanted to purchase, and Mr. Leary shook his head and said: "No, that is no good."

That shortly thereafter affiant again called to see Mr. Leary, and called to Mr. Leary's attention a certain contract he had with the H. Mueller Manufacturing Company for the year 1922, covering a period from January 1, to December 31, 1922, and calling him by [fol. 88] name, affiant said: "Tom, I have a contract with the house." Mr. Leary said, "Well, I think your contract is good." But Mr. Leary also stated to affiant that on the advice of their attorneys, or attorney, they still must refuse to sell affiant; that affiant then had his attorney, at that time a Mr. Elkus, to dictate a letter to his stenographer, which said letter affiant sent by Registered Mail to the H. Mueller Manufacturing Company, at their San Francisco Address, on the 16th or the 17th day of May, 1922; that a few days after affiant had mailed said letter,—about five days,—affiant again went to see Mr. Leary, and was informed that Mr. Leary had left orders with the Clerks of said H. Mueller Manufacturing Company to supply affiant with the materials he wished to purchase, and that ever since said date affiant has been getting materials from the said H. Mueller Manufacturing Company; that the materials affiant had been

endeavoring to secure were materials needed by him to complete his contract for the Park Side School, and that about a week after affiant had mailed the said letter to the H. Mueller Manufacturing Company he was able to secure said materials.

That affiant was refused materials by Crane & Company on April 28, 1922, and several times after that date; that a Mr. Wild the then Manager of said Crane & Company, informed this affiant that for the best interest of Crane & Company, he did not care to sell affiant, and that he had orders not to sell affiant; that later affiant had occasion to telephone to Mr. Dunn, of Crane & Company, for fittings for his contract for the Yerba Buena School, and affiant was informed by Mr. Dunn that he still had orders from the Manager that they should refuse to take any new business from affiant; affiant states that the same thing happened with Mr. Weeks, one of the clerks for [fol. 89] Crane and Company.

Affiant states that he went into the R. W. Kinney Company store, and ordered some fittings from one of the Clerks, and the Clerk to whom he gave the order filled the order; that Mr. Kinney was just coming out of his office and affiant said: "Kinney, I was just in to buy some fittings", and Mr. Kinney said: "No, you can't have any fittings from this house"; that affiant then said: "What am I going to do, I can't get any fittings?"; that Mr. Kinney then replied: "You close your G—— D—— shop; because just as sure as the sun rises and sets this will be an American Plan city". That affiant said: "Well, I am willing to pay for these fittings, Mr. Kinney," but Mr. Kinney replied: "No, that is no good", and ordered the Clerk to put the fittings back into the bin.

That affiant made a trip to Geo. H. Tay & Company for some fittings, of which he was very short at that time, but *the* the Clerk had instructions not to sell affiant; that a little later affiant went again to Tay & Company, and was invited into the office, and was chatting with one of the firm (affiant does not remember who it was) and Mr. Baker, the Manager for Tay & Company was in the adjoining office; that he said to affiant, "Letich, I don't see why you come in here to buy fittings; you have not bought from this house for years; I was up to your house some time ago and you promised you would give us an order but never did; now you come down here to frame us." Affiant then told Mr. Baker that he had come down to buy some materials, and Mr. Baker replied: "No, you didn't, you came down here just to try us out". Affiant then said to Mr. Baker: "I do not agree with you; the reason you did not get my business was that you were always high on your quotations and I was buying elsewhere cheaper"; that after this experience with Tay & Company affiant did not go back there. [fol. 90] Affiant further states that he went to the Dalziel Moller Company, located in Mission Street, near Second, in the City of San Francisco, for the purpose of buying some fittings; that a clerk went over to the bin to fill the order, and just then another clerk stepped up and they had a little chat; that the clerk who had taken affiant's order then came back to where affiant was standing and said to him, "You had better go into the office and see one of the men

there"; that affiant went into the office; that one of the Dalziel's was there and affiant told Mr. Dalziel that he wanted to get some fittings; that Mr. Dalziel said to affiant, "Well, we have none for sale"; that affiant then said, "Does that mean you do not care to sell me?"; and Mr. Dalziel replied: "You can draw your own conclusions; the best thing you can do is to try and fix it up; both sides are acting like a lot of kids"; that affiant thereupon left the Dalziel Moller Company, but did not get the material.

Affiant further states that at Holbrook, Merrill & Stetson, located at Sixth Street and Townsend, in the city of San Francisco, there is a Mr. Stormfield who takes the orders; that affiant went into said store in the usual way and told Mr. Stormfield that he wished to purchase some materials and told him what he wanted; That Mr. Stormfield said to affiant: "I am sorry, Lettich, but I have instructions not to sell you, but I think you had better go up stairs and see one of the firm"; that affiant was told by Mr. Stormfield to go and see Mr. Eastwood; that affiant told Mr. Eastwood he was trying to purchase some material from the clerk, Mr. Stormfield and had been informed by said clerk that he had been instructed not to deliver any material to affiant; that affiant then stated to Mr. Eastwood: "I have got the money here to pay for it", and handed the money to Mr. Eastwood, [fol. 91] who took the money and said: "Yes, it looks good; but you can't have the goods", and handed the money back to affiant; that affiant thereupon left the store and later went back again to see Mr. Stormfield, and Mr. Stormfield told affiant that the instructions were still the same, but added: "You might go up and see Mr. Eastwood again"; that affiant then said: "No. I don't care to go up; can't you reach him on the telephone?" That Mr. Stormfield called Mr. Eastwood on the telephone and talked a few minutes and then came back to affiant, who asked, "Has there been any change?", and that Mr. Stormfield said, "No, why don't you try and fix it up." Affiant then said, "Burr, how am I going to fix it up?", to which question affiant received the reply that he (Stormfield) could not tell. Affiant states that this ended the conversation and he thereupon left the store of Holbrook, Merrill & Stetson.

Affiant states that he was buying materials from the Wolverine Brass Works, up to the 15th day of May, 1922; that on the 16th day of May, 1922, he went in there to purchase some one and one-half inch nickel plated "P" traps; that the clerk went to the shelf where they were kept and picked up one and laid it down; that affiant was about to order and after he had explained to the clerk what he wanted, the clerk said: "I am sorry, Mr. Lettich, we cannot let you have them; we have been instructed not to sell them; affiant states, however, that on the previous day, May 15, 1922, he had purchased some there and has the invoice for said purchase in his possession; affiant states that this was the only trip he made to said Wolverine Brass Works, or tried to purchase from them up to November, 1922.

Affiant states that M. Stulsافت Company were selling materials to him up to May 13th, 1922; that about that time Mr. Stulsافت informed affiant that they could not take care of him any longer; that [fol. 92] affiant had occasion to go back again to M. Stulsافت Com-

pany in about a week and at that time met Maurice Stulsافت in the store, and told the said Maurice Stulsافت that he (affiant) was getting "pretty tight", whereupon Maurice Stulsافت said: "Yes, Lettich, the cards are stacked against you." That affiant then stated that he guessed he would have to try and unstack them. Affiant further states that later on, about August 8th or 9th, 1922, he needed quite a list of materials and that the amount of this list ran up to over \$1,800.00 worth; that a couple of days previous affiant sent his shop man down to the M. Stulsافت Company with the list above mentioned and it was agreed that they would sell this material to a party by the name of T. Gainford, another man in the employ of affiant; that affiant sent Mr. Gainford down to see what arrangements he could make and Mr. Gainford returned with the information that the M. Stulsافت Company wanted the cash; that the next day affiant in company with one Walter von Ploenius, went down to the M. Stulsافت Company's store, and said to Mr. Maurice Stulsافت: "Maurice, I am down here to get that material." That thereupon Mr. Maurice Stulsافت shook his head, and affiant said: "What is the reason, do I owe you any money?"; that affiant was informed that he did not owe the M. Stulsافت any money, and affiant said, "There must be some reason." That thereupon Mr. Maurice Stulsافت said to this affiant: "You are not operating on the American plan; as long as you have that man with you I want him to hear what I have to say." That affiant then tendered the money in payment for said material, and laid two \$1,000.00 bills on the counter; that Mr. Maurice Stulsافت shook his head and said, "No, I can't let you have it."

Affiant states that some of the material that he was endeavoring to purchase from the M. Stulsافت Company was purchased in Sacramento, and the balance of the material he managed to get from [fol. 93] plumbers in the outlying districts.

Affiant states that he went into the store of Grinnell Company of the Pacific, to purchase some steam fittings and other fittings that he required at that time, May 2nd, 1922, and found a Mr. McCabe in charge; that affiant handed the list of materials he wanted to Mr. McCabe, who said to affiant: "I am short, Lettich, on fittings; we are very low; I will take your list." That affiant thereupon handed the list to Mr. McCabe, who went back into the shop, and returned shortly, saying to affiant, "I have none in stock." That affiant then said, "Haven't any at all?", and Mr. McCabe replied, "No, we are very short." Affiant then said, "You mean to say you haven't a half inch 'L' or 'T'?", and Mr. McCabe replied, "We are awfully short". Affiant then said, "Now, Mr. McCabe, is it because I owe you a little bill, that you do not care to sell me?", to which question he received a negative answer; affiant stated, "I have got the money here to pay for the fittings", but Mr. McCabe replied, "We are all out; we haven't any."

Affiant then went up to the M. Stulsافت Company, as he was buying from Stulsافت at that time, and gave the order to the clerk, who stated to affiant that they were short on some of the fittings, and didn't have all of them; that affiant then said to the clerk, "Try Grinnell Company"; that thereupon the clerk called up Grinnell

Company and filled the order from Grinnell, and affiant got the Grinnell fittings for that particular order.

That affiant on about the 10th or 12th of May, 1922, went into the Western Plumbing Supply Company to purchase some 2½ x 1 tee's (galvanized); that affiant had never purchased anything from said Western Plumbing Supply Company before, so that when he [fol. 94] went over to the Clerk, he asked first if they had the fittings; that the clerk went over to the bins and said they had the material in stock; affiant thereupon handed the clerk his card; that the clerk looked at the card and then took out a drawer in the desk and turned to affiant and said: "No, we have orders not to let you have anything." That affiant told the clerk he had the money to pay for the fittings, but affiant could not get them from the Western Plumbing Supply Company at that time.

That some time in May, 1922, affiant went to the Richmond Sanitary Company, to purchase some cast iron soil fittings; that the Clerk looked over affiant's list and said they were very short, and had only enough to supply their steady customers; that affiant inquired if they had any of those things at all that he could have, and the clerk thereupon looked over the list and consulted some of his records and said, "No, we are all out." That as affiant was leaving the store he met Mr. Ephrats coming down from the upper floor and said, "Hello, Ephrats, I was in trying to get some material." Mr. Ephrats replied, "We don't care for your account, Lettich." Affiant then said, "You mean you don't care to sell me?" That Mr. Ephrats replied, "I had some difficulty with you back in 1916, when you failed to pay your bill." Affiant then said, "I think you are mistaken on that, Ephrats. I remember having some controversy in reference to the account where you had overcharged me, but I think I paid you up in full." Mr. Ephrats then said, "Well, it doesn't make any difference; that is the way it stands." Thereupon affiant left the store of the Richmond Sanitary Company.

Affiant called upon the Haines, Jones & Cadbury Company, and consulted the clerk there in reference to some Joint Angle Valves [fol. 95] necessary for a certain job, and asked the clerk if he had them in stock; affiant also mentioned to the clerk at that time that he had better find out if he could sell them to the affiant and could deliver them; that the clerk thereupon went into the office and returned in a very few minutes and stated to affiant that he had instructions not to sell him; that later affiant had an occasion to use and wished to purchase some fittings for the Yerba Buena School contract; that affiant mailed a registered letter to the Haines, Jones & Cadbury Company, stating that he was willing and able to pay for those certain fittings; that in reply affiant received a letter signed by Mr. Marsh, stating that they did not have the fittings in stock, and were not the agent for that particular fitting; Affiant states that it was what is called the "Bennett Wall Closet fitting"; that soon thereafter affiant had occasion to go down to the Haines, Jones & Cadbury Company, and saw there possibly forty or fifty of these fittings back on the counter, this very same fitting, the Bennett Wall fitting for

closets; that affiant reached over and took the tag off one of these fittings.

Affiant further states that the fittings he was trying to purchase from the Haines, Jones & Cadbury Company were bought in Los Angeles from the N. O. Nelson Company.

Affiant went to the Mark-Lally Company to purchase galvanized fittings and gave his order to the clerk; that the clerk thereupon went back into the office and returned to affiant with the statement that he had instructions not to sell him.

Affiant states that in order to secure the necessary materials and fittings to proceed with his various contracts, he was obliged to purchase some of his materials in Sacramento; that he purchased some materials in Los Angeles, and was obliged on one occasion to pay \$75.00 express on one shipment in order to have the materials on [fol. 96] time; that on other occasions he would purchase materials from the smaller shops in the outlying districts which entailed extra drayage and time of men sent to purchase said small lots of fittings; that these out of town purchases were always made by a third or fourth party.

Affiant further states that when he went to the different supply houses in an endeavor to purchase fittings, parts and materials, he took with him a witness in each case; that there were several witnesses as he usually took a different man each time.

Affiant further states that at about this time he had contracts to complete, amounting to about \$60,000.00; that of this amount about \$54,000.00 was School Work; that this work was held up for about thirteen months on account of his inability to secure supplies, for which he was at all times able and willing to pay.

That on May 15, 1922, affiant addressed a letter to the Board of Public Works of the City of San Francisco, setting forth in detail the several occasions when he had endeavored to obtain materials from different supply houses in order to complete his contracts covering the School work, and complaining of his inability to secure the necessary supplies with which to proceed.

AFFIDAVIT OF ETHEL LYNN ON BEHALF OF COMPLAINANT

I, Ethel Lynn, being first duly sworn, depose and say:

That, about the middle of March, 1923, I was engaged in building a basement to be used as a temporary residence and later as a garage, at 3660 21st Street, in the city of San Francisco. I had employed for the purpose of building this structure Chris Salomonson, 721 Sanchez Street, A. Barbato, 529 28th Street, James Riley, 1874 [fol. 97] Howard Street, and James Robinson, 1560 Noe Street.

A large foundation was on the lot, also a large brick retaining wall, part of which had been taken out.

About the 17th of March, I sent Mr. Salomonson to buy rock, sand and cement with which to put in a concrete floor. He called on H. S. Thomson, 3650 Mission Street, and was told that no ma-

terial could be sold to him without a permit from the Builders' Exchange, 180 Jessie Street. Mr. Thomson gave him a card with the address. Mr. Salomonson then went to see Mr. R. O'Connell, 1429 Valencia Street, to get material. Mr. O'Connell said that he had two trucks idle and plenty of material on hand, but could not sell it to Mr. Salomonson without a permit from the Builders' Exchange; that he was checked very closely on the material sold to him and if he sold it without a permit the Wholesale Building Material dealers would refuse to sell him any more material and would put him out of business. Mr. Salomonson then went to the Sibley Grading & Teaming Co., 135 Landers Street, and put in an order for building material; a letter, dated March 19, 1923, (attached hereto) was left under his door, stating that he would have to get a permit from the Builders' Exchange before they could deliver him any material. Mr. Salomonson then called at the James E. Lennon Lime & Cement Co., 352-54 Church Street, to buy material and was told by them that he must get a permit from Mr. Crawford of the Builders' Exchange, 180 Jessie Street, before they could sell him any material.

Mr. Salomonson, having good reason to think that he was on the black list of the Builders' Exchange because he was a member of the Brick Layers Union, assumed the name of C. Johnson and went to the Builders' Exchange to get a permit for the rock, cement, lime and sand. He was asked what he wanted with 25 barrels of lime and [fol. 98] was finally told that there was something "phoney" about the matter, and Mr. Crawford said he would send a man to see about the job. The following day a walking delgate from the Builders' Exchange came to the job and asked hundreds of questions. On the 21st day of March, Mr. Salomonson was able to get 4 yards of No. 3 rock and 50 sacks of cement, and on the 22nd day of March he got 5 yards of sand and 3 yards of No. 4 rock, and on the 23rd of March he got 5 yards of sand but could get no lime. He then went back to get a permit for the lime, when Mr. Crawford demanded to see the owner.

I went down on the morning of Saturday, March 24th, and asked for a permit for 25 barrels of lime. I was asked if I was the owner. I said I was. I was asked if I had let a contract to some contractor. I said, No, I was doing it by days' work, following my own plan. Mr. Crawford wished to know who was working for me. I told him the names of the men employed. He said, "Who is C. Johnson?" I said, "He is an all-around mechanic who is acting as my foreman." Mr. Crawford asked, "Where did you meet him?" I said, "I have known him for a number of years and he has done some work in my office." Crawford said, "Now, if the truth were told, you have let a contract, have you not?" I said, No, I was doing it by days' work just as I had stated. He then made numerous inquiries about the other men and asked if they belonged to the union. I said, "So far as I know they do not." He said, "Have you a building permit from the City?" I said, "No, not yet. The foundation and the sewer were already in on this property, and I expect to get a building permit as soon as we begin actual construction. So far we have been grading and removing the retaining wall, and preparing

to put in a concrete floor." Mr. Crawford said, "So you have no building permit. There is something phoney about this. What do [fol. 99] you want of 25 barrels of lime?" I said that I wanted it partly for plastering, partly for a retaining wall, and partly for the general brick work of the building. He said, "What are you going to build the house out of?" I said brick. He said, "Have you bought the brick?" I said yes. He said, "Where did you buy them? I said that I had bought second hand brick and that I could not tell exactly what building they came from. He said, "How did you find the brick?" I said I was directed to a place by the man at the Western Plumbing Supply Co., on Mission Street. He called up some man on the phone and asked him if he had looked at my place. Then he turned to me and said there had been no bricks delivered on that job, "I will not give you a permit for 25 barrels of lime until you have brick on the job." I said, "I have brick on the job, my own brick which came out of the retaining wall. We are already to begin work and need lime to make mortar." He said "I will give you an order for 5 barrels." I said, "The job is on a hill and the cartage is very heavy. I will practically have to pay no more cartage on 25 barrels than on 5 barrels. More over, 5 barrels of lime is not even a day's work for a hod carrier in mixing mortar, and buying it in such small quantities increases the cost materially." Mr. Crawford said he cared nothing about that and that he thought the whole job was phoney.

He asked then what did I go to the Western Plumbing Supply Company for. I said to buy plumbing. He said, "Oh, ho, so you are putting plumbing into a garage, are you?" I said, "Certainly, it is not only the garage, it is the basement of my home." He said, "And so you bought some second hand brick and you say there is brick on the job when my man tells me there is no brick delivered on the job. I think you are going to have that material carted off [fol. 100] and used on some union job. I will give you a permit for 5 barrels of lime. You can take it or leave it."

I then went to the establishment of James E. Lennon Lime & Cement Co., 352 Church Street. I put the order in there and the manager said he would deliver it on the following morning. I complained about the unfairness of compelling me to buy my lime in such very small quantities, when it placed all the work at so great a disadvantage. He said he realized that it was a hardship, but it was a greater hardship on them than it was on me. He said they had hundred of barrels of lime, thousands of pounds of cement lying in their yards which they could not turn over on account of the Builders' Exchange, which often caused them a loss of sometimes several hundred dollars a day, but if they sold that material without a permit from the Builders' Exchange they themselves would be blacklisted and could buy no more material, so they thought it was better to hang on even though they were losing money than it was to be put out of business altogether. He said he could not sell more than 100 brick nor a sack of cement without a permit; and if he sold a sack of cement to a man, he could not sell another sack without a permit. He could not even sell a barrel of lime or enough to

repair a chimney or a sewer without a permit, but he said the Builders' Exchange had them by the throat and they could only submit.

Later in March Mr. Salomonson tried to get a permit through Lennon for 15 barrels of lime. Lennon's foreman came to 3660 21st Street and told James Robinson, a laborer on the job, that Lennon could not deliver any more material without another permit, and that Salomonson or the owner would have to go in person to get it.

The walking delegate came for the second time. Among other [fol. 101] things he said that he came on the job when the men were not there to investigate.

Salomonson went again to the Builders' Exchange for a permit. He was again asked if he was a contractor or the owner, and when he said that Mrs. Lynn was the owner they demanded that she be sent down. Salomonson explained that Mrs. Lynn was laid up with poison oak and could not come down. Mr. Crawford then said that he refused to give the permit. Mr. Salomonson then asked him to give that statement in writing so he could show it to the owner. Crawford then asked Salomonson if a plumbing contractor was engaged. Salomonson said he did not think so. Crawford then said that he would not give a permit for any more lime until the plumbing contract was let. Salomonson was then given a list of plumbers (list attached hereto), one of whom must be employed before any further permit for the purchase of lime would be issued. Salomonson then made arrangements with R. J. Logemann, 1057A Valencia Street, to do the plumbing. Next morning Salomonson went to Lennon and Lennon phoned the name of the plumber to Mr. Crawford. He was told to wait a while till Mr. Crawford could verify the engagement of the plumber by phone. Later Lennon sent out the lime.

On Saturday, May 12th, accompanied by my nurse, Mrs. Daisy Evans, I went to the Builders' Exchange to get a permit for 8 yards of mortar and 50 sacks of cement for plastering and retaining wall. Mr. Crawford then asked me who was doing the work and I said Mr. Johnson, the man who had worked for me right along. He asked how many yards of plaster there were in the house. I said I wanted 8 yards of mortar, and he said it was an awful lot of mortar to plaster a small place, that it was enough to plaster an eight room [fol. 102] house. Then I said that I wanted a good deal for the retaining wall. He asked me how much rock did I need for the retaining wall. I said I did not know exactly because we had some rock on the place and the man above was digging out some, and he said that rock was not suitable. I said that some of the foundation had been broken up and taken out and we would use that. Then he asked about Mr. Johnson and he gave me the permit. Then he went up to Mr. Lennon's, and I asked the man if he was Mr. Lennon and he said no, he was the manager; and I said I wondered why I did not have as much trouble this time as before and he said probably they had looked me up and knew there was no union man on the job. I said, "Cannot you employ even one union man?" He

said that if any branch of building, for instance, the plumbing or plastering, was union the Builders' Exchange would refuse a permit, and that they could not sell any material without a permit.

COPY OF EXHIBIT ATTACHED TO AFFIDAVIT OF ETHEL LYNN

Sibley Grading and Teaming Co., Office and Yard, 135 Landers
Street

San Francisco, 3/19/23.

C. Salomonsen, 723 Sanches St.

DEAR SIR: Before we can deliver any cement—lime or rock on your order for 3668 21st St. you will have to get permit from the Builders' Exchange and either bring same to us or have the Exchange mail it to us.

Sibley Grading & Teaming Co., by C. G. S.

[fol. 103] COPY OF EXHIBIT ATTACHED TO AFFIDAVIT OF ETHEL
LYNN

Plumbing Contractors Operating on the American Plan

Aaron, Oscar	254 4th Street, Market 70.
*Ahlbach & Mayer.....	85 Dorland Street.
Anderson, Geo.	160 Steuart Street.
Anderson & Rowe.....	529 Falcon Avenue.
Bahrt, Fred	112 Highland Avenue.
Bahr, John	1747 Geary Street.
Baerne, L. J.....	508 Octavia Street.
*Band, S. W.....	580 Valencia, Park 1880.
Beck, Joseph	1487 O'Farrell Street.
Beasley, D. J.....	604 Oak Street.
Bernstein, L.	1114 Buchanan Street.
Black, J. A.....	3596 24th Street.
Blackman, M. J.....	1248 Divisadero Street.
*Brodie, Thos.	2119 Fillmore Street, West 2002.
*Bernard, George F.....	Page & Gough Streets.
Brook, J. H. & Son.....	225 Olive Street.
Bryan, L. J.....	3257 17th Street.
Broslin, C. H.....	135 3d Avenue.
Boost, C. R.....	3812 24th Street.
Boni & Paolini.....	2352 Lombard Street.
Buick, Wm.	211 4th Avenue.
*Burnham Plumbing Co.....	1220 Webster Street, West 1843.
Bodmer, C. A.....	906 Corbett Street.

Carmichael, Wm. & Co.	3306 San Jose Avenue.
Camp & Israel	218 Grove Street.
Campbell, David	6333 Mission Street, Daly City.
Costa, J. L.	1041 Filbert Street.
Cohen, M.	776 Sacramento Street.
*Coleman, Alex	706 Ellis Street, Franklin 1006.
Condon, J. J.	362 Ellis Street.
Cronin, John	2370 California Street.
Cooper, R. I.	4216 California Street.
Curtis, E. C.	403 8th Street.
Dalsiel, R. Jr.	218 1st Street.
*Davidson, F.	739 Brannan Street, Park 7177.
De Lane Bros.	70 Spear Street.
Degneau & Demere.	3277 Mission Street.
Di Vecchio, S. J.	1608 Union Street.
*Deasy & Atwood.	185 Stevenson Street, Sutter 3580.
Deckery, W. F.	71 Dehon Street.
Delventhal, E. M.	789 Castro Street.
*Ernst, H. & Son.	633 Hayes Street, Park 522.
Fay, Jas.	1629 Oakdale Avenue.
*Fisher & Wolfe.	207 Tehama Street, Kearny 4410.
Ford, Wm.	2182 Market Street.
Ford, T. J.	1213 Octavia Street.
Fitzpatrick, J.	1012 Oak Street.
*Forster, W. J. Co.	67 Howard Street, Douglas 3037.
Gallagher, J. C.	1275 Valencia Street.
Gibbs, Davis	654 5th Avenue.
*Gibbs, J. Sons.	1708 Geary Street, West 6099
[fol. 104] *Gilley-Schmid Co.	198 Otis Street, Market 965.
Gomersel, F.	1114 Valencia Street.
*Goss, W.	4640 Geary Street, Pacific 753.
Goldstein, Louis	1831 Lincoln Way.
Grondona & Frankis.	2929 Harrison Street.
Hahn, A. J.	456 Waller Street.
Hays, E. L.	465 Bryant Street.
Hays, D.	1326 McAllister Street.
Haub, Geo. P.	1237 Filbert Street.
Herger & Kerr.	1063 Dolores Street.
*Higgins, C. W.	1306 Shrader Street, Park 4239.
Hobro, J. L.	734 Washington Street.
Heaney, Ed.	369 19th Avenue.
Hoffman & Schalich.	942 Pacific Street.
Hooper, F. E.	3606 20th Street.
Heinz, C.	2144 Union Street.
Hass, Robert E.	41 Falcon Avenue
James & Drucker	450 Hayes Street.

- Kayser, Chas. 425 Ivy Street.
 Kelly, Geo. S. 331 Linden Avenue.
 *Kierman & O'Brien..... 1756 Mission Street.
 Kernan, J. J. 1300 Golden Gate Ave.
 *Klimm, F. J. 221 Oak Street, Markt 1935.
 Kerr, Chas. 2921 Irving Street.
 Kluegal, A. 158 Church Street.
 Klien, A. E. 3115 22nd Street.
 Koch, F. & Son. 1808 Market Street.
 Koenig, W. G. 134 Battery Street.
 Kreger, F. C. 826 Pacific Avenue, Alameda.
 *Kurtz, Otto 445 Stevenson Street, Kearny 1790.
 Kohler, F. 1175 Alabama Street.
 *Lacey, E. V. 3485 21st Street, Douglas 3038.
 La Chapelle, W. S. 3259 Mission Street.
 Lang, L. W. 1372 Pacific Street.
 *Lawson, Herman 344 4th Avenue, Market 275.
 Lawson & Dracker..... 450 Hayes Street, Market 275.
 Lee, Jas. D. 1626 Guerrero Street.
 Leisor Bros. 622 Larkin Street.
 Lerner, H. 1834 Folsom Street.
 *Lettich, J. M. 185 Stevenson Street, Sutter 3580.
 Lou, M. 58 14th Street.
 Leveroni, Edw. 446 Columbus Avenue.
 Logeman, R. J. 1057-A Valencia Street.
 Lubliner, C. W. 151 Eddy Street.
 Looney, J. Co. 827 Ashbury Street.
 Mangrum, A. S. 827 Mission Street.
 Madden, Ed. E. 1259 Vermont Street.
 Marchinske, Otto 2524 Clay Street.
 *May, Gus 3680 18th Street, Market 2118.
 Meyer, S. 8 Hollis.
 Machan, P. 1055 O'Farrell Street.
 Marchi, P. 43 Oakwood Street.
 *McKeen, F. 233 Post Street, Kearny 3867.
 McCloskey, James 2406 Howard Street.
 *McCleod, J. J. 1246 Golden Gate, Filmore 482.
 Moliis, A. I. 140 Chenery Street.
 *Monthan & Slavin..... 1554 Fulton Street, Filmore 989.
 [fol. 105] Morrise, T. B. 3529 19th Street.
 Montrose & Jennsen..... 445 Jones Street.
 Morrison & Bevilockway ... 110 Steuart Street.
 Myers, Wm. 3476 Sacramento Street.
 *Morton, C. Y. 1230 LeConte Ave., Randolph 2662.
 Mullins, J. J. 1090 Carolina Street.
 Murray, Roy 1928 McAllister Street.
 Nebel, W. J. 244 Lowell Street.
 Newmark, A. 1638 Baker Street.
 Nicholai, F. 1942 Post Street.

- *O'Mara, J. N. 443 Minna Street, Douglas 3421.
 O'Soske, Harry 789 36th Avenue.
 Patrice, Wm. 3882 25th Street.
 *Peterson, S. & Son. 2337 Filmore Street, West 7741.
 Peterson, C. Co. 730 Larkin Street.
 *Pinkerton, J. H. 927 Howard Street, Kearny 1737.
 Plevine & Morrice. 321 Noe Street.
 *Power & Pike. 128 Beale Street, Douglas 1558.
 *Powers, V. E. 18 Jessie Street, Sutter 6700.
 Randall & Grimmer. 275 Miramar Street.
 Raisch, Fred 900 O'Farrell Street.
 *Ramazzotti & Gerino. 1473 Vallejo Street, Franklin 3203.
 Richeter, E. G. 4742 California Street.
 Reynolds & Gutavson. 1290 9th Avenue.
 Ravani Plumbing Co. 46 Auburn Street.
 Radoni, A. C. 1216 Folsom Street.
 Rohr, Joseph 2333 Post Street.
 Reliable Plumbing Co. 508 Ellis Street.
 Rosskamp, Herman 1447 Divisadero Street
 Sand, J. C. 262 Church Street.
 S. F. Plumbing & Supply Co. 5016 3rd Street.
 *Sass, Frank 558 Vallejo, Kearny 5286.
 S. F. Plumbing & Supply Co. 5016 3rd Street.
 Schalich, J. A. 1671 Church Street.
 Schuldt, Chas. H. 327 Goettingen Street.
 Scott Co. 243 Minna Street, Douglas 3048.
 Shepard Bros. 600 California Street.
 *Silva, A. J. 504 Gough Street, Park 8257.
 Simpson, Chas. 345 27th Avenue.
 *Sinewald, J. L. 508 Ellis Street.
 *Skelly, Thos. 1344 9th Avenue, Sutter 3268.
 Slattery Bros. 730 Clement Street.
 *Snook, F. W. Co. 596 Clay Street, Kearny 1374.
 Stalder-Hinkelbein Co. 155 Polk Street.
 *Stube & Griffin 351 5th Street.
 Sullivan, C. H. 544 Waller Street.
 Stevens, J. F. 720 Montgomery Street.
 Stroheimer & Koenig. 1375 Sutter Street.
 Szanik, Samuel 1712 O'Farrell Street.
 Stenger, A. 3115 Filmore Street.
 *Tobacco, Philip 7 Tracy Place, Garfield 1813.
 Trezise, A. C. 1212 McAllister.
 Tezise, J. S. 1190 McAllister.
 Trousdale, W. B. 1728 Sacramento.
 Tusch, Geo. 2455 24th Avenue.
 [fol. 106] Valente & Springer. 1618 Lombard Street.
 *Von Tagen, H. 60 Clay Street, Kearny 3728.

*Wade & Miller.....	3355 17th Street.
Ward, Hugh A.....	331 Missouri Street.
*Watson, Chas.	1912 Divisadero Street, West 960.
Wara, George	1751 Market Street.
Weck, Walter	2231 Market Street.
Wesendunk, Phili	540 4th Avenue.
*Weinholz, N. George.....	350 Mission Street, Valencia 6853.
*Wilson, Wm. F. Co.....	328 Mason Street, Sutter 357.
Whiteley, H. T.....	3382 22nd Street.
*Williamson, H. Co.....	1376 Mission Street, Market 1674.
Zaro, G. N.....	1403 Bush Street.

AFFIDAVIT OF FRANK C. MACDONALD ON BEHALF OF COMPLAINANT

Frank C. MacDonald, being first duly sworn, deposes and says:

That he has been a resident of the City of San Francisco, California, for the past twenty (20) years, and that during that time he has been closely identified with the building industry in the said City;

That he is now the General President of the State Building Trades Council of California, and that he has personal knowledge of the facts hereinafter stated;

That many members of the State Building Trades Council of California, engaged in the building and contracting business in the City of San Francisco, and in other cities and towns throughout California, have been unable to purchase building supplies on account of the arbitrary policy pursued by the Industrial Association of San Francisco, in refusing to issue to said Builders and Contractors, permits to purchase said supplies; that Builders and Contractors employing union labor have been refused permits to purchase supplies, by the Industrial Association of San Francisco, and that members of the said Industrial Association of San Francisco engaged in the wholesale building supply business, have absolutely refused to sell building material to members of our Trade Council, covering practically every craft in the building industry, unless the said members [fol. 107] of our Council employed American Plan labor.

The said building material so withheld from builders and contractors, by the Industrial Association of San Francisco, and by the individual members of said Association, is manufactured almost exclusively outside of the State of California and transported by rail and water from other states into the State of California, and includes the following building material:

Asbestos Material

Used for roofing, insulating, flooring, shingles and cement;

White Cements

Atlas cement, Medusa white cement, Keene Cement;

Plaster of Paris and Hardwall

Arden and Empire plaster, Reno plaster, Empire Gypsum, Nephi plaster and Jumbo brand plaster;

Glass

Plate glass for window and mirrors, and vitrolite glass;

Plumbing

Metal pipe, tanks, tube, enameled ware, and earthen ware used in connection with plumbing work for residences and buildings;

Iron and Steel

Structural steel;

Sheet Metal

Sheet metal, sheet iron, and sheet steel;

Hardware

Locks, bolts, hinges, door knobs, door knockers, door openers and closers, pulleys and chains;

Flooring

Hardwood flooring, composition floorings and linoleums;

Paints, Oils and Varnishes

Paints, oils, varnishes, red and white leads, and color pigments used in the building industry;

[fol. 108]

Elevators

Elevators and dumb waiters, and general equipment in connection therewith, such as motors, generators, pumps, hydraulic rams, cables and various mechanical parts which are installed in building;

Heating

Furnaces, oil burners, radiators, water heaters;

Electricity

Electric wires, electric fixtures, and electric supplies entering into building construction;

Marble

Practically all marble used in the State of California is shipped into the state from Alaska, Colorado, Vermont and Tennessee.

AFFIDAVIT OF N. H. McLEAN ON BEHALF OF COMPLAINANT

N. H. McLean, being first duly sworn deposes and says:

That at three o'clock Thursday, June 29, 1922, he, in company with A. J. Mooney, appeared in the office of the Pacific Portland Cement Company, Consolidated, Room 819 Pacific Building, San Francisco; that they asked for the manager and the sales manager, and were informed that both of these gentlemen were out of town; that they then asked for the gentleman in charge and were introduced to a Mr. Towle; that they told Mr. Towle that their mission was to buy plaster and that operating under union conditions they were of the opinion that they would be unable to get same, but their idea of coming to the said Pacific Portland Cement Company, as agents for Empire plaster was to find out whether or not there was a higher court of appeal to whom they could address themselves in a final effort to secure Empire plaster; whereupon Mr. Towle informed them that the Pacific Portland Cement Company were not only the agents for Empire plaster but in fact that they owned the [fol. 109] plant at Mound House, Nevada, and that Empire plaster was their product; that Mr. Towle stated further that he would sell them plaster providing they had a permit from the Builders' Exchange, but under no other circumstances.

AFFIDAVIT OF A. J. MOONEY ON BEHALF OF COMPLAINANT

A. J. Mooney, being first duly sworn deposes and says:

That one Fred Figel now is, and at all of the times herein mentioned was a duly appointed and acting agent in San Jose, California, for the Pacific Portland Cement Company, whose principal offices are located at #827 Pacific Building, San Francisco, California, and which is engaged in the manufacture and sale of cement and hardwall plaster and has its hardwall plaster factory at and manufactures Empire Brand plaster at Mound House, Nevada; that

on the 27th day of June, 1922, he, in the company of Grant R. Bennett, an attorney of San Jose, and J. F. Cambiano, visited the said Fred Figel in his office in the Growers' Bank Building, San Jose, California; that then and there J. F. Cambiano stated to the said Fred Figel that he, Cambiano, wanted to buy 40 tons of Empire Brand hardwall plaster from the said Pacific Portland Cement Company, and then and there tendered in payment therefor the sum of One Thousand Dollars (\$1,000) in lawful currency of the United States of America; that then and there the said Fred Figel stated that under instructions received by him from the said Pacific Portland Cement Company he could not and would not sell any plaster to J. F. Cambiano or to any union man or to any person without a permit from the Industrial Association of San Jose because and by reason of an understanding and agreement entered into by and between the said Industrial Association and his company and other dealers in and manufacturers of plaster, which said Association was working in conjunction with the Industrial Association of San Francisco [fol. 110] cisco; that the said Fred Figel then and there stated further that in so refusing to sell the said plaster as aforesaid he was acting under the express orders and directions received by him from the said Pacific Portland Cement Company; that then and there the said Fred Figel stated further that the said Pacific Portland Cement Company had its hardwall plaster factory where the Empire Brand plaster is manufactured at Mound House, Nevada, and gets its product therefrom; that the said Fred Figel then and there stated further that he had on hand in San Jose, California, some of the Empire Brand plaster and that he could fill the said order of J. F. Cambiano, from the said plaster on hand and by having shipped in from the said Mound House, Nevada, more plaster sufficient to fill the said order; the said Fred Figel then and there stated that as agent and representative of the said Pacific Portland Cement Company, and acting under their authorization and instructions, he had gone to Watsonville, California, and he had stopped the delivery of a carload of cement which had been sold by the said Pacific Portland Cement Company to the Pajaro Valley Mercantile Company, and that he had caused the money which had been paid for the said cement to be returned to the purchaser and that he had done this because he had been informed and believed that the said cement was intended for union workers which was contrary to the agreement and understanding that had been entered into by the Pacific Portland Cement Company with the other building material dealers and manufacturers of cement, plaster and similar materials.

That at three o'clock Thursday, June 29, 1923, he, in company with N. H. McLean, appeared in the office of the Pacific Portland Cement Company, Consolidated, Room 819 Pacific Building, San Francisco; that they asked for the manager and the sales manager, [fol. 111] and were informed that both of these gentlemen were out of town; that they asked then for the gentleman in charge and were introduced to a Mr. Towle; that they told Mr. Towle that their mission was to buy plaster and that operating under union conditions they were of the opinion that they would be unable to get

same, but their idea of coming to them as agents for Empire plaster was to find out whether or not there was a higher court of appeal to whom they could address themselves in a final effort to secure Empire plaster; whereupon Mr. Towle informed them that the Pacific Portland Cement Company were not only the agents for Empire plaster, but in fact that they owned the plant at Mound House, Nevada, and that Empire plaster was their product; that Mr. Towle stated further that he would sell them plaster providing they had a permit from the Builders' Exchange, but under no other circumstances.

AFFIDAVIT OF FRANK D. MULLIN ON BEHALF OF COMPLAINANT

Frank D. Mullin, being first duly sworn, deposes and says:

That he is a shoe salesman, and maintains an office at #453 Pacific Building, 821 Market Street, in the City of San Francisco, State of California;

That he owns several pieces of real estate and buildings in the City of San Francisco, in different parts of town, and that he is at present building two bungalows on Corbett Avenue, about 185 feet west of Denver Street, in said City of San Francisco; that he has a man who does his building under contract, and that he contracts with the different trades, such as plastering and plumbing, etc., for the work to be done on his different buildings; that he never asks a man to whom he is letting a contract, whether the man is a non-union or a union worker.

[fol. 112] Affiant states that the man who had the plumbing contract for his said buildings on Corbett Avenue, is a Union man, and the man who had the plastering contract for his said buildings, is a non-union man; that when the plasterer was ready to go to work on his contract, the San Francisco Builders Exchange down on Jessie Street, in the city of San Francisco, told this affiant that he could not have any cement or plaster without a permit, that is a permit to buy cement, plaster or any material, such as hair and other articles that would be necessary for the plastering work to be done on his said buildings, unless he would cancel the plumbing contract with the Union plumber who had the contract to do the plumbing work on said buildings, and would employ one of the plumbers that the Builders Exchange would select for him, and that the man so selected would be a non-union plumber.

This affiant further states, that he informed the Builders Exchange that the contract for the plastering of said buildings had been let while he was away from San Francisco; that the contracts were let by affiant's carpenter; that affiant thereupon told the Builders Exchange that inasmuch as the contract in question was let to this plumber, he was to complete the job whether he was Union or non-union; that affiant very emphatically informed said Builders Exchange this plumber was to complete that job, and that they (the said Builders Exchange) could 'go to the Devil;' that thereupon

said Builders Exchange told this affiant, "well, that job is tied up and you will not be able to buy any plaster, or cement, or other materials that go into that work, without a permit from us."

This affiant states that he does not know where he stands; that he believes he can get the material at once, but does not know [fol. 113] whether he can get it at all positively; that the plasterers were ready to go to work on the day he endeavored to secure the materials, but were unable to go ahead with their work because they did not have the materials to go to work with; that he cannot buy the materials without discharging the plumber to whom the contract has been let; that this would cost affiant a considerable sum of money, because under his contract it would be necessary to pay this plumber, and he would then have to pay another plumber to do the work in question; in other words, he would be compelled to cancel the contract with the plumber and pay him off, and then hire other plumbers to do the work; that affiant is not inclined to spend any more money for the buildings in question.

Affiant further states that he did not know when he hired the man to put up the buildings at Corbett Avenue, that any restrictions of the nature above stated existed; that he is away on the road most of the time and cannot keep in touch with conditions in San Francisco; that it is not always possible to secure the San Francisco papers up in the State of Oregon and Washington.

Affiant states that the name of the plasterer to whom the contract for said work was let, is J. Joannardes, a non-union man.

Affiant further states that his contracts are all let out to the lowest bidders; that he never questions whether they are Union or non-union men workers to whom the contracts are let.

Affiant states also that he has resided in the City of San Francisco all his life, and has done considerable building in said City of San Francisco since the fire; that he also owns some real estate in Los Angeles, California, and has done some building there, but that [fol. 114] the conditions above described do not prevail in Los Angeles.

AFFIDAVIT OF THOMAS F. RICE ON BEHALF OF COMPLAINANT

Thomas F. Rice, being first duly sworn deposes and says:

That he called at the home of T. J. Broderick (a builder), at 1528 Cyprus Avenue, Burlingame, California, on May 1, 1923, to interview him regarding conditions in the building industry; that Mr. Broderick stated to affiant that he had been in the building business in and around San Francisco, California, for the past seventeen years; that Mr. Broderick stated that he was, and always had been a Union man, but at the present time he employed Union and Non-Union or American plan men on all his jobs; that Mr. Broderick stated to affiant that in July, 1922, he had a contract to build a private home on Ashbury Street, near Hayes Street, in San Francisco, and that all of his sub-contractors were American plan con-

tractors except one P. O'Brien who had the sub-contract to do the plastering; that said O'Brien was a union contractor and employed all union men, and that O'Brien was unable to get a permit to purchase cement for this particular job;

That Mr. Broderick stated to affiant, that he then went to the Industrial Association and tried to get a permit to purchase 100 bags of cement; that the Industrial Association refused to issue the permit to him for the reason that the said O'Brien was a Union sub-contractor; that after holding him (Broderick) up for two weeks, the Industrial Association decided to issue the permit for the purchase of the cement in question.

Affiant further states that Mr. Broderick informed him that the said P. O'Brien resides at #917 Florida Street, in the City of San Francisco, State of California.

Affiant further states that Mr. Broderick stated this was the only instance where he had been refused supplies by the Industrial Association. [fol. 115]

AFFIDAVIT OF SAGE WATSON ON BEHALF OF COMPLAINANT

Sage Watson, being first duly sworn, deposes and says:

I am a brick contractor. My residence is 626 Pine Street, San Francisco, California. My business address is Room 409 Rialto Building, San Francisco, California.

I am not a member of any labor association. I was a member of the Builders Exchange of San Francisco and a member of the Masons and Builders Association of such Builders Exchange until 1917, when I left San Francisco.

During the early part of 1921, I had two contracts in San Francisco, to-wit: To brick up a new boiler and build new brick partition walls and make other alterations in the factory of the American Can Company at Twenty-second and Kentucky Street, San Francisco, and a job for the French Hospital at Fifth Avenue and Point Lobos Street, San Francisco, to construct a small brick building to house engines and turbines. During the latter part of June, 1921, I tried to purchase the necessary materials for these two jobs in San Francisco, to-wit: Common brick, fire brick, lime and cement. I talked with Samuel Smith, one of the proprietors of the United Materials Company, in their office in the Sharon Building, San Francisco, California, during the latter part of June, 1921. Mr. Smith telephoned in my presence to William H. George of the San Francisco Builders Exchange. Mr. Smith was told by Mr. George to send me to the Builders Exchange to get a permit to purchase said materials. I refused to do this. Mr. Smith then said that if I did not get a permit his company could not sell me any material. Mr. Smith informed me that Mr. George told him that if I would employ non-union men to be furnished by him, or that if I would do the job myself [fol. 116] I could get the materials; otherwise not. As I could neither spare the time to do the work myself and could not trust

that kind of work to the incompetence of non-union men, I was compelled to abandon the job.

As to the materials needed for the French Hospital job, I interviewed Mr. E. L. Snell, the proprietor of the Eclipse Lime Company, 135 Landers Street, San Francisco, for ready mixed mortar. There was present at this interview Mr. L. D. Armstrong, of Room 409 Rialto Building, San Francisco. Mr. Snell gave us two large placards about 18 inches square (the statement on the placard being that this job is an American plan job) and said that if I would tack up on the French Hospital job said placard, I could have the materials, otherwise not. Like placards were tacked up in various parts of San Francisco at that time.

Mr. Armstrong and I then went to the Builders Exchange to see Mr. William H. George, and were referred to Mr. Charles Gompertz. Mr. Gompertz said to us, "You sign an agreement here to work on the American plan and we will see that you get all the materials you need."

About February, 1922, I made a bid to make the brick installation for three boilers in the Standard Oil Building, Bush and Sansome Streets, San Francisco. My bid was rejected and the work was done under the American plan by non-union men. The doing of this work was part of the contract of Mr. Kincaid, % Engineering Products Company, 729 Rialto Building, San Francisco. Mr. Kincaid is also agent of the Puget Sound Machinery Depot of Seattle, which last named company manufactured the boilers installed in the Standard Oil Building. After this work was done, Mr. Kincaid told me that the job cost him about \$700.00 more than my bid. My bid would have made me a profit of about \$2,500.00. It is common report that the brick work on the Standard Oil Building cost the [fol. 117] Standard Oil Company about 25% more under the American Plan as enforced in San Francisco than it would have cost with competent union men on the job.

I have had numerous jobs in various parts of California since the American Plan was put in operation in San Francisco, in the Counties of Butte, San Joaquin, Siskiyou and Fresno, and have had no difficulty in obtaining fire brick, lime, cement, common brick, sand and all other necessary building materials from San Francisco material dealers for such jobs, but have been refused such materials for either San Francisco, San Mateo or Santa Clara Counties.

The United Materials Company, the Stockton Fire Brick Company, the Remillard Brick Company and the Sacramento Brick Company are all members of the San Francisco combination which is enforcing the so-called American plan.

At the present time I have a contract for the installation of boilers at the County Hospital near Belmont, San Mateo County, California. For this job I placed an order with Mr. E. Corrigan of the Stockton Fire Brick Company for 8,000 fire brick. Mr. Corrigan informed me that his company was in trouble with the San Francisco combine because of this order, but that his company took the order in good faith without any knowledge that San Mateo county

was included in the San Francisco permit system and that his company would fill the order, because it had not been notified by the Builders Exchange of San Francisco that San Mateo County was a permit County before the order was accepted.

The Remillard Brick Company of San Francisco agreed to ship me 8,500 red brick for said County Hospital job near Belmont in San Mateo County, but when the shipment was about to be made this company was ordered not to make the shipment by the Builders [fol. 118] Exchange of San Francisco, and I was compelled to obtain such brick from Sacramento, California. This refusal by the Remillard Brick Company of San Francisco was during the latter part of October, 1922. Mr. Jerroe (?), who is a nephew of Mr. Remillard and acting as a manager of the Remillard Brick Company of San Francisco, told me that he was ordered by the Industrial Association of San Francisco not to ship that brick to the County Hospital of San Mateo County, which conversation was in the office of the Remillard Brick Company in the Phelan Building, San Francisco.

Mr. Hoyt of the United Materials Company told me that San Mateo County was included in the permit system governing San Francisco County, in a conversation on October 19, 1922 in his office in the Sharon Building, San Francisco.

E. J. Brennan, a member of the Builders Exchange of San Francisco, told me about November 21, 1922, at Third and Stevenson Streets, San Francisco, in relation to the recent holding of various material men by Judge Daniel S. O'Brien, for trial in the Superior Court in San Francisco, that the members of the Builders Exchange of San Francisco "are just laughing about that; they think it is a joke; they are not worrying about the Lettich indictments; they have plenty of money to fight anything that comes along; they have millions behind them."

In speaking about my inability to get material for my job near Belmont, California, he said, "They are not bothering with small fry like you; they are after the big fellows."

William Rainey, a member of the Builders Exchange of San Francisco told me about November 21, 1922, at Third and Stevenson Streets, San Francisco, when I asked him why he did not go out and fight this conspiracy, "If you open your mouth in there about hiring union men they would lick you in a minute." Mr. Rainey [fol. 119] has been prevented from getting material because he employed union men under assumed names on various jobs in San Francisco.

Mr. Bartel, manager of the Sacramento Brick Company, and Mrs. Remillard, of the Remillard Brick Company, have both told me that the operation of the American plan in San Francisco has ruined the brick business in San Francisco. Mr. Bartel stated to me that their usual annual sale of bricks in San Francisco amounted to about 2,000,000 bricks, but that the sale of his company in San Francisco this year would not reach 60,000 bricks. He told me that in his office at Sacramento about October 23, 1922.

Between Kearny Street and Van Ness Avenue in San Francisco there are now under construction about 28 buildings. These build-

ings are all concrete except one, which is brick veneered. One of the results of the American Plan in San Francisco is that concrete is being substituted for brick.

Before the inauguration of the so-called American Plan in San Francisco, the use of brick in the building industries in San Francisco was largely in excess of the use of brick for such purposes in Los Angeles, California. During the present year there has not been used in San Francisco, in my opinion, more than 3,000,000 bricks. I am informed that there has been already used this year in Los Angeles, California, 240,000,000 bricks. I was so informed by Mr. Jerroe of the Remillard Brick Company.

AFFIDAVIT OF FRANK C. MACDONALD ON BEHALF OF COMPLAINANT

Frank C. MacDonald, being first duly sworn, deposes and says:

That he has been a resident of the City and County of San Francisco, State of California, for the past twenty years, and that during that time he has been closely identified with the building industry [fol. 120] in the said City and County of San Francisco;

That he is the General President of the State Building Trades Council of California, and, as such, has fully investigated the matters herein and in the Bill of Complaint set forth, and has personal knowledge thereof.

That the defendants, William H. George, D. J. Sullivan, Joseph B. Keenan, R. J. H. Forbes and Alex Mennie now are, and at all the times herein mentioned were, officers and members of the defendant Builders' Exchange of San Francisco, a corporation.

That on or about the 12th day of April, 1921, at the said city and County of San Francisco, the said William H. George, D. J. Sullivan, Joseph B. Keenan, R. J. H. Forbes and Alex Mennie, as such officers and members of the said Builders' Exchange, and acting for and in behalf of the said Builders' Exchange, and being duly authorized and empowered so to act, combined, conspired, confederated and agreed with and among themselves, and with and among divers other officers and members of the said Builders' Exchange, and with and among divers manufacturers and dealers in building materials and with and among the other defendants, in the manner following, to-wit:

That no building materials should be sold or delivered to any person in the said City and County of San Francisco, or in any of the counties adjacent thereto, unless such person should first obtain from a certain committee of the said Builders' Exchange, known and designated as the Industrial Relations Committee of the Builders' Exchange, a written permit authorizing him to buy the same, and that the said Industrial Relations Committee should be authorized and empowered, and it was then and there authorized and empowered, [fol. 121] to grant or to refuse such permits at will, and that it should be given, and it was then and there given, full authority and

power to carry out and to put into force and effect the said combination, conspiracy, confederation and agreement.

That pursuant to the authority and power so conferred on it as aforesaid the said Industrial Relations Committee proceeded to adopt and did adopt rules and regulations governing and to govern the granting of the said permits.

That among the rules and regulations so adopted as aforesaid was and is a rule and regulation that no such permit shall be granted to any person who employs a labor union foreman or more than one-half of whose employees are members of labor unions, or to any person who employs a building contractor or builder or other employer of labor whose foreman is a member of a labor union or more than one-half of whose employees are members of labor unions.

That pursuant to the authority and power so conferred on it as aforesaid the said Industrial Relations Committee did, on or about the 12th day of April, 1921, adopt a rule and regulation that forthwith there should be put under the said permit system heretofore referred to and described, all the following building materials, to-wit:

"Cement, Lime, Plaster, Ready-Mixed Mortar, Common Brick, Fire and Face Brick, Terra Cotta, and all Clay Products, also Rock, Sand and Gravel."

That pursuant to the authority and power so conferred on it as aforesaid that said Industrial Relations Committee did then and there adopt a rule and regulation that "as soon as proper arrangements can be made the permit system will be extended to all other materials in the building industry."

That pursuant to the authority and power so conferred on it as [fol. 122] aforesaid the said Industrial Relations Committee did, on or about the 21st day of June, 1922, adopt a rule and regulation that forthwith there should be put under the said permit system all the following additional building materials, to-wit:

"Wall Board, Button Lathe, Keene Cement, and all Plaster Products, in San Francisco, San Mateo and Santa Clara Counties."

That pursuant to the authority and power so conferred on it as aforesaid the said Industrial Relations Committee did, on or about the 30th day of June, 1922, adopt a rule and regulation that forthwith there should be put under the said permit system all the following additional building materials, to-wit:

"Wire Lathe and Metal Lathe, and all Kinds of Wood Lathe."

That on or about the 31st day of May, 1922, the defendant Industrial Association of San Francisco, a voluntary unincorporated association, and its officers, members, agents and representatives, combined, conspired, confederated and agreed with and among themselves, and with and among the officers and members of the said Builders' Exchange, and with and among the members of the said

Industrial Relations Committee, and with and among all the dealers in plumbers' and steamfitters' supplies in the said City and County of San Francisco, that the said Industrial Association should assume charge and control of, and should carry out and put into force and effect, the said combination, conspiracy, confederation and agreement, in so far as the same affected such plumbers' and steamfitters' supplies.

That in pursuance of the said combination, conspiracy, confederation and agreement, and in furtherance thereof, the said Industrial Association did, on or about the 1st day of June, 1922, and at divers times thereafter, mail to all the said dealers in plumbers' and steamfitters' supplies divers written lists containing the names of all [fol. 123] plumbing contractors and master plumbers who were employing labor union foremen or more than one-half of whose employees were members of labor unions, and under and pursuant to the said combination, conspiracy, confederation and agreement and in furtherance thereof, all the said dealers then and there agreed not to sell, or deliver, and did not sell or delivery, any such plumbers' or steamfitters' supplies to any such plumbing contractor or master plumber.

That under and pursuant to the said combination, conspiracy, confederation and agreement, and in furtherance thereof, the said Industrial Relations Committee agreed with the said Industrial Association not to grant any permit for any of the building materials put under the permit system as aforesaid, and heretofore enumerated and described, to any person who employed any such plumbing contractor or master plumber.

That under and pursuant to the said combination, conspiracy, confederation and agreement, and in furtherance thereof, the said Industrial Association has paid and is paying the expenses incurred by the said Builders' Exchange in conducting, operating and maintaining the said permit system, and has furnished and is furnishing to the said Builders' Exchange the names of all contractors and other persons conducting building operations contrary to the rules and regulations aforesaid, and the names of the owners of the buildings in, upon or about which such building operations were and are being conducted.

That on or about the 20th day of November, 1922, the said Industrial Association discontinued the said practice of mailing the said written lists to the said dealers in plumbers' and steamfitters' supplies, and then and there the said Industrial Association, and its members, officers, agents and representatives, combined, conspired, [fol. 124] confederated and agreed with and among themselves, and with and among the said Builders' Exchange and its officers and members, and with and among the members of the said Industrial Relations Committee, that, in lieu thereof, the said Industrial Association should furnish to the said Industrial Relations Committee the names of all plumbing contractors and master plumbers operating contrary to the rules and regulations aforesaid, and the names of all building contractors and other persons employing such plumb-

ing contractors or master plumbers, and the names of the owners of the buildings, and that the said Industrial Relations Committee should not grant any permit for any of the building material put under the said permit system as aforesaid, and heretofore enumerated and described, to any person who employs any such plumbing contractor or master plumber, or to the owner of any building in, upon or about which any such plumbing contractor or master plumber is employed.

That almost the entire supply of the following building materials in the said City and County of San Francisco, and in the said counties adjacent thereto, is manufactured outside the State of California and is shipped from other states into the said State of California by rail and by water, to-wit:

Asbestos Materials

Used for roofing, insulating, flooring, shingles and cement.

White Cement

Atlas cement, Medusa White cement and Keene cement.

Lime

Diamond Brand, manufactured in Roche Harbor, Oregon, and in Blubber Bay, Canada.

Plaster of Paris and Hardwall

Arden and Empire Plaster, Reno Plaster, Empire Gypsum, Nephi Brand Plaster, and Jumbo Brand Plaster.

[fol. 125]

Glass

Plate Glass for windows and mirrors, and Vitriolite Glass.

Plumbers' and Steamfitters' Supplies

All Metal Pipe, Tanks, Tubs, Enameled Ware and Earthen Ware, used in connection with plumbing work for residences and other buildings. Practically all Plumbers' and Steamfitters' Supplies of every kind, character and description.

Iron and Steel

Structural Steel.

Sheet Metal

Sheet Metal, Sheet Iron and Sheet Steel.

Hardware

Locks, Bolts, Hinges, Door Knobs, Door Knockers, Door Openers and Closers, Pulleys and Chains.

Flooring

Hardwood Flooring, Composition Flooring and Linoleum.

Paint, Oil and Varnish

Paint, Oil, Varnish, Red and White Lead, and Color Pigment used in the building industry.

Elevators

Elevators and Dumb Waiters, and general equipment in connection therewith, such as Motors, Pumps, Hydraulic Rams, Cables and various mechanical parts which are installed in buildings.

Heating Appliances

Furnaces, Oil Burners, Radiators and Water Heaters.

Electric Appliances

Electric Wires, Electric Fixtures, and Electric Supplies used in buildings.

Marble

Practically all Marble used in the State of California is shipped [fol. 126] into the said State of California from Alaska, Colorado and Vermont, except that quarried in California.

That it was and is the purpose, object and intent of the said combination, conspiracy, confederation and agreement, and of the members thereof and of the parties thereto, to secure complete and absolute control and dominion over all the building materials in the said City and County of San Francisco, and in the said counties adjacent thereto, including all building materials shipped and to be shipped into the said City and County of San Francisco, and into the said counties adjacent thereto, from other States and from foreign nations, and to prevent the sale or delivery thereof to all persons in the said City and County of San Francisco, and in the said counties adjacent thereto, who do not comply with the said rules and regulations regarding union labor foremen and union labor workmen, and to prevent such persons from importing any building materials into the said City and County of San Francisco, and into the said counties adjacent thereto, from other states and from foreign nations, and thereby to prevent such persons from instructing or repairing any buildings or building or other structures or structure, or from doing any building or repair work in, upon or about any buildings or building or other structures or structure, in the said City and County of San Francisco, or in the said counties adjacent thereto.

That the said combination, conspiracy, confederation and agreement now is, and at all the times herein mentioned has been, in full operation, force and effect, and no person in the said City and

County of San Francisco, or in the said counties adjacent thereto, can obtain any of the building materials put under the permit system as aforesaid, and heretofore enumerated and described, who does not conform to the rules and regulations aforesaid; that the defendants threaten to and, unless restrained by this Honorable [fol. 127] Court, will continue to conduct, operate and maintain the said combination, conspiracy, confederation and agreement as aforesaid.

That beause and by reason of the said combination, conspiracy, confederation and agreement, a large number of building contractors in the said City and County of San Francisco, and in the said counties adjacent thereto, have been and are unable to obtain building materials, and have been and are greatly impeded, hampered, harassed, and interfered with in the conduct and operation of their business, and thereby they have suffered and are suffering great and irreparable injury and damage, and the amount of such injury or damage cannot be ascertained. That the continuance of the acts herein and in the Bill of Complaint set forth, during the litigation, would and will produce great and irreparable injury and damage to such building contractors as aforesaid.

That because and by reason of the said combination, conspiracy, confederation, and agreement a large number of owners of land in the said City and County of San Francisco, and in the said counties adjacent thereto, have been and are unable to obtain building materials and have been and are unable to construct buildings or other structures upon their land, or to repair buildings or other structures upon their land, and thereby they have suffered and are suffering great and irreparable injury and damage and the amount of such injury or damage cannot be ascertained. That the continuance of the acts herein and in the Bill of Complaint set forth, during the litigation, will produce great and irreparable injury and damage to such owners of land as aforesaid.

That because and by reason of the said combination, conspiracy, confederation and agreement a large number of workmen who are members of labor unions have been and are unable to obtain employment and have been and are unemployed, and thereby they have suffered and are suffering great and irreparable injury and [fol. 128] damage, and the amount of such injury or damage cannot be ascertained. That the continuance of the acts herein and in the Bill of Complaint set forth, during the litigation, will produce great and irreparable injury and damage to such workmen as aforesaid.

AFFIDAVIT OF THOMAS F. RICE ON BEHALF OF COMPLAINANT

Thomas F. Rice, being first duly sworn deposes and says:

That he is a Special Agent of the United States Department of Justice; that he has personal knowledge of the facts hereinafter stated;

That heretofore, and on or about September 22, 1922, he was requested by the Honorable Harry F. West, Assistant Attorney General, to personally confer with one or more of the executive officers of Crane & Company, Chicago, Illinois, Grinnell Co., Providence, R. I., Wolverine Brass Works, Grand Rapids, Michigan, Haines, Jones & Cadbury, Philadelphia, Pa., and H. Mueller Manufacturing Company, Decatur, Illinois, with reference to the situation at San Francisco, California, caused by the fight between the Industrial Association of San Francisco and the Building Trades Council.

That deponent interviewed J. H. Borton, President of Haines, Jones & Cadbury, who stated to deponent that he was familiar with the conditions existing in San Francisco, in reference to the fight of the Industrial Association of San Francisco and the Builders' Exchange to enforce its rulings against union labor regarding the American Plan or "open shop" fight, and further stated that Mr. H. C. Marsh, the Manager of the San Francisco branch, was employed by his company on a salary and commission basis, and that he (Marsh) had kept the home office posted regarding the success of the "open shop" fight, but that he himself did not know the methods employed by the Industrial Association and the Builders' Exchange to enforce its rulings; he said that he had cautioned Mr. Marsh to [fol. 129] be careful, and had advised him to follow the policy of Crane & Company of Chicago, not to do anything that would involve the company in Federal litigation; that he had been advised by counsel that the Industrial Association of San Francisco and the Builders' Exchange were not in any way violating the Sherman law; he said that he would get in touch with his Agent, Mr. Marsh, in San Francisco and caution him to be careful regarding his future conduct, and to withdraw from the Association if necessary, regardless of the advice of counsel for the Industrial Association.

Mr. Borton said that on April 23, 1922, he had received the following letter from Mr. H. C. Marsh, his agent in San Francisco:

"Haines, Jones & Cadbury Co., San Francisco, Cal.

Mr. J. H. Borton, President

4-26-1922.

Subject: HCM 42610B.

To: Philadelphia.

We are wiring you tonight, as per enclosed copy of telegram, in which we are advising you that the Industrial Asso. are asking our support in the present strike.

I wrote you sometime ago that we were having difficulties again, and this time it involved the plumbers, and I was very much in hopes that the matter would be settled before the Jobbers of Plumbing Supplies were asked to take any action, but unfortunately there seems to be no indication of an immediate settlement.

During the trouble last year the material men would only deliver material on American Plan jobs under what was known as the Permit system, in other words, no material in the way of lumber, lime, cement or bricks, or material of that class would be delivered on any

job unless the Contractor had a permit for the material, and for some specified job, from the Industrial Association. We were very much in fear that the same condition would exist at the present time, but it has been modified to the extent that any orders which have been accepted by the jobbers, in which they had obligated themselves to furnish on any job, whether it was an American Plan job or Union job, that such orders would be filled, but to get around the thing the Industrial Association have now asked the jobbers of Plumbing Supplies not to furnish material on any but American plan jobs after April 24, and furthermore not to quote prices to plumbers not operating under the American plan.

There are approximately 400 plumbers in San Francisco and there are but ten of them who are not operating under the American Plan, and of this ten, but four of them deal with us, the other six are small outfits that do not mean much and do not bother us.

[fol. 130] I also mentioned in my telegram that one of the largest jobbers here had gone into the legality of this matter and had an opinion from his attorneys, which he was kind enough to furnish me with a copy and which I am enclosing herewith. I understand that all the jobbers here are lending their support to this cause, and personally I cannot see where we would be hurting ourselves or laying ourselves liable by co-operating with them, and I hope to receive your reply authorizing us to do as the other jobbers are doing.

It is going to place us in a very embarrassing position if we cannot help this cause along, and I almost feel certain that it would do us a great deal of harm on future work should we not be willing to co-operate.

All interests in San Francisco and California are behind the American Plan as you no doubt are aware, from the owners, the architects, and the banker, and they seem determined to have buildings in San Francisco continue and place everybody in a position to earn a living.

H. C. Marsh."

On March 26, 1922, Mr. Borton said that he had received the following telegram from his agent, Mr. H. C. Marsh:

"San Francisco, Cal., April 26, 1922.

Mr. J. H. Borton, 1135 Ridge Ave., Philadelphia, Pa.:

Industrial Association asks our support in present strike by not accepting orders nor quoting those not operating under American Plan. Understand all but ten Master Plumbers in San Francisco are operating American Plan and only four of these ten doing business with us. This does not effect any orders we have accepted but only new business. One of largest jobbers here have gone into legality of this very carefully and are advised by their attorneys that this is strictly a State matter and within the law. All jobbers here are giving their support. See Frank Brodie at St. James Hotel, Phila. Please wire reply.

H. C. Marsh."

That on September 23, 1922, deponent interviewed Mr. Russell Grinnell, Vice-President of the Grinnell Company; Mr. Grinnell stated to deponent that he was familiar with certain conditions existing in San Francisco, caused by the fight between the Industrial Association and the Builders' Exchange, and union labor; he said that he knew some of the methods employed by the Builders' Exchange to enforce its rulings, but that his company had not authorized its representative at San Francisco to do anything that might possibly involve it in difficulties with the United States Government; he said that his company had not discriminated against union [fol. 131] plumbers by refusing to sell them on account of being on the Plumbers list, and that the only plumbers they refused to sell their goods to, were plumbers who were considered a poor financial risk; he said that one of the Vice-Presidents of the company had recently gone to San Francisco, and that he would get in touch with him at once and see that the San Francisco representative of the company was properly instructed, and that the Federal law would be strictly complied with; he said that he had not handled any of the correspondence referring to this matter, but that regardless of the requests or the demands of the Industrial Association or Builders' Exchange of San Francisco, his company would in every way comply with the law and not place itself in a position where the Federal authorities could ever question its future conduct.

That on September 24, 1922, deponent interviewed Mr. E. H. Raymond, Vice-President of Crane Company, who stated to deponent that his company was a member of the Industrial Association and the Builders' Exchange of San Francisco, and that on July 11, 1921, it had contributed \$2,000.00 to the general fund collected to defray the expenses of the above named organizations; Mr. Raymond said that his company had not refused to sell its products to union plumbers, and that the only firms that were refused goods were firms that were not considered financially responsible; that his company would continue to pursue the same policy in the future and that it would in no way do anything that could reasonably be construed by the Department of Justice as a violation of the Sherman law; he said that Mr. J. B. Barrymore, Vice-President of the Crane Company was personally familiar with the situation and was at that time in San Francisco, and that he (Mr. Raymond) would communicate with him at once and advise him of the fact that the Department of Justice was looking into the activities of the Industrial Association and Builders' Exchange, and [fol. 132] to make certain that the company's representative at San Francisco did nothing to involve the company in Federal prosecution; He further stated to deponent that he approved of the policy of the Attorney General, and that he would assist him in every way by strictly complying with the law in the conduct of the company's business, and that he considered that the President's policy in guiding and safeguarding the people's interests, had safely carried the country through perilous times.

That on September 24, 1922, deponent interviewed Mr. Robert Mueller, Secretary of the H. Mueller Manufacturing Company. Mr.

Mueller stated to deponent that his company was not a member of the Industrial Association or the Builders' Exchange of San Francisco, and that the company's representative, Mr. Thomas Leary of the San Francisco office had pleaded with the home office for permission to join the Builders' Exchange, on account of the conditions existing locally which prevented him from doing business; that authority to join either association had been refused by the President, Adolph Mueller, and that Mr. Leary was warned not to do anything that would involve his company in Federal litigation; Mr. Mueller said that the only dealers his company refused to sell goods to were dealers that were not financially responsible, that his plan was the "Open shop" plan, but that it employed union labor, and that he was friendly to union labor when it played the game fair. Mr. Mueller stated to deponent that on May 6, 1922, he had received the following telegram from Mr. Thomas E. Burke, General Secretary and Treasurer of the United Association of Plumbers and Steamfitters:

"We have had serious complaint from our representatives at San Francisco stating that your firm refused to sell goods to bona fide and legitimate firms and the reason given was because they were employing our members. This is a fair case of black list and boycott and [fol. 133] an absolute violation of the Sherman Anti Trust Law and also of the rights of men. We were indeed surprised to learn of this because we know in the past your firm has always acted fairly and never allowed any interference in relation to the sale of your material to proper legitimate concerns that employ our members. There has been complaints regarding other firms that it is claimed you are in combination with them to keep legitimate firms from securing material. The Attorney General of the United States is now investigating this situation and you should protect yourselves by going along as you have always done and sell material to those that you have always done business with previously and always considered to be reliable and legitimately engaged in business. Would like to hear from you by wire as to what action your firm intends to take on this serious grievance of ours so that I can notify our representative at San Francisco.

Thos. E. Burke."

That on May 8, 1922, Mr. Mueller wrote the following letter in reply to Mr Burke's telegram:

"Mr. Thomas E. Burke, c/o Journeymen Plbrs., Gas & Steam Fitters, 7024 South Park Avenue, Chicago, Illinois.

DEAR SIR: Your telegram of May 6th duly received reading as follows:

"We have had serious complaint from our representatives at San Francisco, stating that your firm refused to sell goods to bona fide and legitimate firms and the reason given was because they were employing our members. This is a fair case of black list and boycott and an absolute violation of the Sherman Anti Trust Law and also of the

rights of men. We were indeed surprised to learn of this because we know in the past your firm has always acted fairly and never allowed any interference in relation to the sale of your material to proper legitimate concerns that employ our members. There has been complaints regarding other firms that it is claimed you are in combination with them to keep legitimate firms from securing material. The Attorney General of the United States is now investigating this situation and you should protect yourself by going along as you have always done and sell material to those that you have always done business with previously and always considered to be reliable and legitimately engaged in business. Would like to hear from you by wire as to what action your firm intends to take on this serious grievance of ours so that I can notify our representative at San Francisco.'

Mr. Adolph Mueller is absent from the City and therefore we undertake to answer your telegram.

Surely you are misinformed of the business policy and practice of [fol. 134] the H. Mueller Mfg. Co., governing the sale of its goods. It has always been the policy of the H. Mueller Mfg. Co., to exercise its right on its own individual judgment to choose its own customers without interference from others, yet it has never directly nor indirectly entered into any agreement nor understanding with other manufacturers or their representatives to refuse to sell goods to any responsible customer on account of any relations that the customer may sustain to any organization, and you are exactly right when you say that our Company has always sold its goods to reliable customers and always acted fairly and never allowed any interference in relation to the sale of our goods. This has always been the policy and this always will be the policy of our Company.

If anyone claiming to represent our Company in any other manner has refused to sell goods by reason of any combination with other manufacturers then we will promptly disapprove of such a course for the reason that such action is unauthorized by this Company.

You may feel assured that the policy and practice in the sale of goods of the H. Mueller Mfg. Co., will always be fair and that it will never unjustly discriminate on account of a customer belonging to any organization or on account of any agreement or combination with other manufacturers.

This Company will in the future, as in the past, insist upon the right to transact its own business on its own judgment without any interference from others.

Yours very truly, H. Mueller Mfg. Co."

On September 27, 1922, deponent interviewed Mr. L. A. Cornelious, President of the Wolverine Brass Works, Grand Rapids, Michigan; Mr. Cornelious stated to deponent that he was familiar with existing conditions in San Francisco, California, regarding the fight between union labor and the American Plan or "open shop" associations; that his firm had always been an "open shop" firm, but that it does not discriminate against union labor; that it sells its entire product to Master Plumbers, and that it does not sell to the

jobbing trade; he further stated to deponent that his firm was not a member of the Industrial Association or the Builders' Exchange of San Francisco, and that his representative in San Francisco had not been authorized by him to enter into any agreement, written, [fol. 135] verbal or implied, with any individual, firm or association, for the purpose of restricting the sale of its products; he further said that he realized that the eastern manufacturers having representatives or selling agents on the Pacific Coast were in a different position than the firms doing a strictly local business in California; he said that regardless of any legal advice given to his representative in San Francisco by Counsel for the Industrial Association of San Francisco, that he (Cornelius) would write his representative at once and caution him against doing anything that might involve his company in litigation or prosecution by the United States Government; he said that he had cautioned his representative, Mr. Lamond about joining with others in San Francisco in doing anything that might be construed by the Government as violating the Sherman Law, and gave to deponent a copy of the following letters to substantiate that statement:

"Mr. A. S. Lamond, Wolverine Brass Works, Inc., 210-216 Natoma Street, San Francisco, Cal.

DEAR ANDY: I am returning your letter of the 14th in the matter of deductions for Sink Connections, which was an error in printing the Price List and which will be promptly corrected, and we thank you for calling our attention to it.

"I note your of the 13th and also the copy of the newspaper, testifying to the fact that you were "pinched." Well, my dear boy, I think it is quite an honor to receive this recognition, and I believe that in your case particularly they cannot make out a case against you.

"Of course, it is to be hoped that the Association or whatever they call it in San Francisco that is fighting for the American Plan will be able under their procedure to get a Court Decision that warrants whatever they have done. It would seem with the class of men who associated themselves together that they would have taken sound legal advice before going ahead, and that they know what they are doing.

"However, I want you to bear one thing particularly in mind, [fol. 136] namely, that my preliminary letter to you in this whole matter and, as I understand it, your own action has been one as individual and as representing an individual company; or, in other words, you have made no agreements, express or implied, with any other jobbers, manufacturers, local association or any individual as to whom you would or would not sell, but that you have by individual choice turned down certain concerns for reasons sufficient to yourself.

Very truly yours, (Signed) Wolverine Brass Works. L. A. Cornelius, Prest."

Mr. Cornelius gave to deponent a copy of the following letter that he had written to the United States Attorney at Cedar Rapids, Iowa, for the purpose of showing that his company had no agreement or agreements, express or implied, directly or indirectly, with any individual, firm, corporation or association:

"Grand Rapids Mich., July 14, 1922.

"Mr. G. P. Linville, United States Attorney, Cedar Rapids, Iowa.

MY DEAR SIR: This acknowledges yours of the 12th stating that some concern in Sioux City accuses us of discrimination in the matter of filling orders and shipping goods and other acts in restraint of trade.

You inquire as to whether or not we desire to furnish you our side of the controversy for your consideration. So far as we are concerned, we know of no controversy and we do not know what individual or company has filed any complaint against us. Manifestly, we cannot furnish our side until we know what the complaint is.

"We can, however, advise you that our acts and our correspondence in any and all portions of our policy and business are and shall continue to be an open book for the Department of Justice, and we will gladly and willingly furnish you any information regarding any act or transaction, any individual or company that you may request.

"Further, please be advised that in the conduct of our business we confine our output to one distinct channel, namely, the Master Plumbers, and this policy has been in existence for years, is well known to the trade and is publicly advertised in trade papers. In other words, our advertised policy is "Direct from Maker to Plumber." This policy excludes the middle man or the so-called jobber, and we have refused many times to do business with concerns who have or [fol. 137] would job our product. We have been legally advised that we have a perfect right to choose our customers. This we have done and is the only conceivable reason for complaint that the writer can imagine.

"Further, we wish it distinctly understood, because it is a matter of fact, that we have no agreement or agreements, express or implied, directly or indirectly, with any individual firm, corporation or association as to whom we shall or shall not sell, and the opening of our accounts and the shipping or non-shipping of material is in every case an individual matter between our corporation and the actual or would-be customer.

"In view of the above, if any further information is desired, please advise us.

Very respectfully yours, (signed) Wolverine Brass Works.
L. A. Cornelius, Prest. LAC:FL."

Deponent further says that regardless of the statements made to him by the Executive Officers of the aforesaid companies a further investigation of the Industrial Association of San Francisco by the

Department of Justice shows that three of the above companies had financially contributed to the Association, and that all of the five companies heretofore mentioned had joined with other members of the Industrial Association in refusing to sell building material to certain builders and contractors, and still refuse to sell to said contractors and builders such materials, unless said contractors agree to employ non-union or so-called American Plan labor.

AFFIDAVIT OF THOMAS F. RICE ON BEHALF OF COMPLAINANT

Thomas F. Rice, being first duly sworn, deposes and says:

That he is a Special Agent of the United States Department of Justice; that he has personal knowledge of the facts hereinafter stated.

That heretofore and on June 6th, 1923, deponent called at the office of the Collonan Electric Company, at 3211 Mission Street, San Francisco, for the purpose of interviewing Mr. C. F. Collonan; [fol. 138] Mr. Collonan stated to Agent that he had been in the Electric Supply business in the City of San Francisco, for several years; that he was and is a member of the Builders' Exchange, and that on May 5th, 1923, he was cited to appear before the Grievance Committee of the Builders' Exchange, on Thursday, May 10, 1923, for trial upon charges referred to the Grievance Committee by the Board of Directors of said Builders' Exchange. He said the reason that he had been cited to appear before the Grievance Committee, was on account of having employed one Charles Gomez of 1163 Dolores Street, San Francisco, to do the plumbing work on buildings that he was then erecting on Guerrero Street, south of Duncan Street; he said that he had started to build three and four room apartments on a lot that he owned at this address; that before employing Gomez, who is a union contractor, he had received two bids for the plumbing work, one from a contractor named Patrice, at 1429 Church Street, for \$1,860.00, and one bid from a Mr. Black for \$1,650.00; the day after Black had submitted his bid, he called on Mr. Collonan, and he (Collonan) told Black that he would accept his bid and have him do the work as he agreed for \$1,650; Mr. Black said that he had not given Mr. Collonan any such bid, and that the lowest bid he would make for doing the work was \$2,085.00; Collonan refused to give Black the contract at this figure and Black replied that if he did not give him the contract at that price, namely, \$2,085.00, that he would post the bid with the Builders' Exchange, and that meant that he (Collonan) would not secure a lower bid.

Collonan further stated to Agent that he had reason to believe that Black had seen some of the Executive Officers of the Builders' Exchange between the time he had submitted his original bid of \$1,650.00 and the second bid of \$2,085.00; he said his reason for surmising that some one in the Builders' Exchange had seen Black, [fol. 139] was that a Mr. Tanner, one of his employees, had previously called on L. E. Crawford, Secretary of the Builders' Exchange,

for the purpose of securing a permit to purchase rock, sand and cement; that at the time Mr. Crawford issued said permit to Mr. Tanner, he asked Tanner what Contractor had been employed to do the plumbing work on Collonan's building.

Shortly after employing Gomez, a union plumber, he (Collonan) received the following communications from the Builders' Exchange:

"San Francisco, Cal., May 5, 1923.

"Mr. Collonan, Collonan Electric Co., 3211 Mission St., City.

DEAR SIR: This is to notify you to appear before the Grievance Committee, Thursday, May 10th, 1923, at 11:15 o'clock A. M., for trial upon charges referred to the Grievance Committee by the Board of Directors as per attached copy.

Yours very truly, The Grievance Committee. (Signed) S. A. D. Schench, Asst. Secty.

It becomes necessary to prefer charges against Mr. Collonan of the Collonan Electric and Manufacturing Co., for reasons stated in the following:

Yours very truly, The Industrial Relations Committee.

The Collonan Electric Manufacturing Company, members of the Builders' Exchange are building four apartments on Guerrero, 68 ft. S. of Duncan. They applied for a permit for the foundation but none of the sub-contracts had been let. I took the matter up with Mr. Collonan personally and explained to him in detail just what the situation was in the plumbing, plastering and brick laying crafts. He announced his intention of doing the job by day work. I asked him where he would get his plumber, and he told me it was his intention to have one of the Master Plumbers who belonged to the Exchange take out the license for the job, and he would then use some of his electricians in connection with a plumber or two to [fol.140] rough in the plumbing. After explaining the situation to him thoroughly so that there could be no misunderstanding I told him we would expect him to live up to his signed pledge literally. I would not have issued the permit to any one other than a member of the Builders' Exchange under those conditions. On checking the job yesterday we found about fifty per cent of the plumbing roughed in and the work being done by R. Wunderlich, representing the Striking Union Plumbers at 14th and Guerrero Street. I took the matter up with Mr. Collonan this morning and he showed no indication that he intended to correct the situation. I will refuse to issue any plastering material on the job, and I believe in view of the conditions under which Mr. Collonan got his permit, that charges should be preferred against him.

(Sgd.) L. E. Crawford.

This is to certify that this is a true certified copy of the charges filed against you with the Board of Directors and by the Board of Directors referred to the Grievance Committee for trial.

Respectfully, The Builders' Exchange. Y. H. Forbes, Secty.
(Seal.)

"San Francisco, Cal., May 14, 1923.

"Mr. Collonan, of Collonan Electric & Mfg. Co., 3211 Mission Street, City.

DEAR SIR: The Grievance Committee of the Builders' Exchange is called to meet Thursday, May 17th, 1923, at 11-15 A. M., at which time charges of the Industrial Relations Committee against you, as per our letter of May 7th, 1923, will be taken up, as continued from the meeting of May 10, 1923.

Please be present at the time above stated.

Respectfully, The Grievance Committee. (Signed) S. A. D. Schenck, Asst. Secretary."

"San Francisco, Cal., May 21, 1923.

"C. F. Collonan, Collonan Electric Co., 3211 Mission Street, City.

DEAR SIR: Kindly favor the Grievance Committee of the Builders' Exchange, with the two bids you spoke of in the meeting of the above committee May 11th, 1923.

Please hand these to me as soon as possible so that this matter may [fol. 141] be finished, the bids will be returned to you shortly.

Respectfully, The Grievance Committee. (Signed) S. A. D. Schenck, Asst. Secretary."

San Francisco, Cal., May 29th, 1923.

"C. F. Collonan, 3211 Mission Street, City.

DEAR SIR: The Grievance Committee of the Builders' Exchange was adjourned to Thursday, May 31st, 1923, from May 24th. May I again request you to favor us with the two copies of the contracts you received in the matter before the Grievance Committee.

Kindly let us hear from you in reference to the above, so that the question before the Committee may be finished.

Respectfully, The Grievance Committee. (Signed) S. A. D. Schenck, Asst. Secretary."

That the four above mentioned letters had been sent to Mr. Collonan by Registered Mail, and that after receipt of the fourth letter he appeared before the Grievance Committee of the Builders' Exchange, and after being questioned in reference to employing union labor, he was asked by the Grievance Committee of the Builders' Exchange not to employ union labor and to discharge Gomez, his union contractor.

That on June 6th, 1923, Agent mailed a notice to Mr. Collonan, at his business address in the City of San Francisco requesting him

to call on Mr. Henry A. Guiler, Special Assistant to the Attorney General, Federal Building, San Francisco; on June 7th, 1923, Mr. Collonan called Mr. Guiler's office on the telephone and said that he would appear on the following day; on the following day Mr. Collonan failed to appear at Mr. Guiler's office.

At the time that Agent talked with Mr. Collonan he (Collonan) [fol. 142] told Agent that he was really afraid to become involved in any dispute with the Builders' Exchange or the Industrial Association of San Francisco; that they were both powerful organizations and that they were in a position to put him out of business with very little trouble; he said that he had his entire fortune tied up in his business and that he wished to be able to continue conducting his business along the same lines as he had heretofore conducted it, without being compelled to stand in line, hat in hand, asking some third party to permit him to buy supplies, when he had good American dollars in his pocket to pay for same.

AFFIDAVIT OF J. E. CONNELL ON BEHALF OF COMPLAINANT

J. E. Connell, being first duly sworn on oath deposes and says:

That he is engaged in the business of Contracting Plasterer in the City of San Francisco, with his place of business at 180 Jessie Street, in said City of San Francisco;

That heretofore, and on or about June, 1922, affiant with four other Master Plasterers, organized the Golden Gate Building Material Company; that at the time of the organization of said corporation, affiant was and now is, a member of the Builders' Exchange of San Francisco; that on June 6th, 1923, he was at the office of the Builders' Exchange in San Francisco, and while there had a conversation with W. H. George, the President of said Builders' Exchange, and that the said W. H. George at that time agreed to enter into a contract with this affiant to sell to affiant his entire supply of lime, plaster and cement for the following year, upon the condition that if affiant agreed to enter into said contract, the said George would furnish him his materials at a price or prices much lower than the price or prices charged to the General Public, or in other words at a price or prices below the prevailing market.

That after Mr. George had made the proposition to supply this [fol. 143] affiant with materials, affiant told him that he was connected with the Golden Gate Building Material Company and had his money invested with said company, and wished to continue business with said Golden Gate Building Material Company; that Mr. George then replied in practically the following language: "You are all right as Master Plasterers, but you are very poor business men", and also said to this affiant, "You know, if we manufacturers make up our minds, we can put the Golden Gate Building Material Company out of business at any time."

AFFIDAVIT OF WILLIS POLK ON BEHALF OF COMPLAINANT

Willis Polk, being first duly sworn, on oath deposes and says:

That he is an Architect with offices in the Hobart Building, San Francisco, California; that he has been engaged in business in the City of San Francisco for the past thirty-seven years; that he has personal knowledge of the facts herein set forth;

That heretofore, and on or about May, 1921, affiant had a conversation with Athol McBean, on the train between San Francisco and San Mateo, in which said McBean outlined the proposed working plan of the Industrial Association of San Francisco and the Builders' Exchange of San Francisco, and its purposes and object in inaugurating the so-called "American Plan" in connection with the building trade. In the course of this conversation, Mr. McBean explained to affiant that he would never again be able to get competition as he did in the case of the Terra Cotta for the Hobart Building; he explained to affiant that the National Terra Cotta Society, which he was proud to have been instrumental in forming, had entered into an agreement in the nature of a "gentlemen's agreement," whereby no member would invade the self-outlined territory assigned to each [fol. 144] member; in other words, he explained to affiant that affiant could not hope to secure bids in this territory from any members of the National Terra Cotta Association. With an almost innocent look, and in a perfectly guileless manner he said to affiant: "Willis, you understand that in the case of the Hobart Building, the Atlantic Terra Cotta Company of New York underbid us and that you offered us their price." Affiant said he certainly had done so, that he wanted to keep the business, but was not in a position to pay more than the Atlantic people asked. That Mr. McBean's price was in and around \$59,000.00; his contract with the Hobart Estate Company was \$52,500.00. Continuing the conversation affiant said, "Why, Athol, isn't what you have just told me about the National Terra Cotta Society nothing more nor less than a combination in restraint of trade." He said, "No, it is an association of the highest standing, leading firms in our business in the entire country, organized for the sole purpose of eliminating from our business the peddling of bids." Affiant said, "Well, Mr. McBean, be that as it may, does not such a combination open the door for the fixing of prices?" Affiant states that the subject of conversation took another track.

Affiant states that perhaps a year prior to the movement for the American Plan in San Francisco, the General Contractors' Association formulated rules and regulations whereby all member bidders were required to file their bids and register same with their Secretary, twenty-four (24) hours prior to the delivery of such bids to any owner or architect or other agent of an architect. Affiant's office at that time had invited bids on a projected building, and at the hour set for the closing of said bids, affiant asked his office manager how the bids were coming in. He said, "Not a one has been received." [fol. 145] Almost immediately thereafter, State Senator—Supervisor

William S. Scott, Secretary at that time of the General Contractors' Association, Secretary of the Graders' and Teamsters' Union, Secretary of the Master Masons' Association, Secretary of the Master Plasterers' Association, and Secretary of other organizations which affiant does not now recall; in fact the general Puh Bah of the Building Industries, entered the office of affiant with the bids in question and said, "Hello, Willis, here are them bids you called for." Affiant said, "What bids, Bill?" He said, "These here bids you asked the boys for." Affiant said, "Oh, yes, I did ask the 'boys' for bids, but I asked the 'boys' to deliver the bids to me, and not to you." He said, "Oh, well, Willis, what's the difference?" Affiant said, "Well, Bill, maybe there isn't any difference, but I do not think I have been authorized by my clients to delegate my business, in respect to the receipt of bids, to you, or to any other representative of the business." Mr. Scott then said, "Well, anyhow, Willis, here are the bids." Affiant then said, "Keep them, Bill." He said, "Well, the 'boys' took a lot of trouble figuring this here job out for you." Affiant said, "Well, I am sorry, Bill, they gave you the bids instead of giving them to me." He said in despair, "Well, what am I going to do with these here bids?" Affiant states that it might be offensive to the dignity of the court for him to state exactly what he told Mr. Scott to do with the bids in question, but he (Scott) kept them and retired from affiant's office.

Affiant states that within a few days thereafter, he received an imperious summons, practically tantamount to a Subpœna from the High Court, to appear before the "so called" joint arbitration board of the General Contractors' Association. Upon appearing that evening before the said Board, affiant found that it was composed of [fol. 146] representatives not only of the General Contractors' Association, but also of the State and San Francisco Building Trades Council, and the Bay District Council of Carpenters and Joiners; Affiant was asked peremptorily to state whether or not he had refused to receive bids "lawfully" tendered by their Secretary. Affiant said he certainly had refused to receive them; affiant was asked if it was his purpose to defy their rules and regulations, and affiant explained that he was not authorized by his clients to subscribe to their so-called laws or rules. Secretary Scott then said, "Willis, why don't you stand in with the 'boys'; if you will do that the thing is as good as done." Affiant said, "Well, I cannot do it, gentlemen; to my mind it is nothing more or less than a scheme to fix prices in the building business." Affiant then addressed the representatives of Organized Labor present, who had informed him that unless affiant did subscribe to their laws, that organized labor would find it impossible to furnish mechanics or labor on any building or buildings under his supervision. Affiant said to them, "Boys, this is a bad scheme; it won't work; it will result in an increase in the cost of building beyond the point of safe investment; it will kill the Goose that lays the golden egg, and labor will be the first to suffer." The Chairman, a representative of the General Contractors' Association, said that the corporations and the rich investors could well afford to pay the

price, and that the Builders intended to stand in to see that the "Boys" got justice. Affiant then said "Boys, do you think in case this scheme can be put over, that these contractors are going to increase your wages or shorten your hours; take it from me, they won't; you will merely be the 'cat's paw' in the game." Affiant then thanked the gentlemen assembled and retired.

Affiant states that during the following weeks a number of Gen- [fol. 147] eral Contractors plead with him, and told him that by right he was a member of their organization and ought to support them; that they were in a position of sufficient power to enforce their rules; that they could destroy affiant's business; and that it would be better for all concerned if affiant would endorse their rules and join their organization. In view of later developments this was probably good advice to affiant, as it is almost impossible for a business man in San Francisco to secure supplies or labor.

Affiant states that shortly after this, perhaps a month or six weeks, the State Building Trades Council, under the presidency of P. H. McCarthy, held its annual convention in Los Angeles; affiant requested and was granted the privilege of addressing the convention, and advised the members of all local unions' representatives present that this was an "Unholy alliance," and predicted that it would result in the disorganization of their own unions. In the case of the San Francisco unions this has proven to be true.

STIPULATION RE SUMMARY OF TESTIMONY

It is hereby stipulated by and between the parties hereto, by and through thir respective attorneys, that the annexed summary of testimony contains a correct statement of the contents of the record in the case of *The People of the State of California vs. William H. George et al.*, No. 12,795, in the Superior Court of the State of California, in and for the City and County of San Francisco, and also contains a true copy of the Constitution and By-Laws of the Industrial Association of San Francisco, and may be used and considered by the Court in lieu of such transcript and in lieu of such Constitution and By-Laws.

[fol. 148] SUMMARY OF TESTIMONY OF WITNESSES IN THE ACTION ENTITLED "PEOPLE OF THE STATE OF CALIFORNIA V. WILLIAM H. GEORGE ET AL., #12,795, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

S. A. B. SCHENCK, witness called on behalf of the people, testified as follows:

Residence, Oakland, California; business, Assistant Secretary of the Builders' Exchange of San Francisco, a corporation organized

and existing under and by virtue of the laws of the State of California, and having its principal place of business at 180-188 Jessie Street, San Francisco, California; served twenty (20) years as said Assistant Secretary; Wm. H. George, is a member of the Builders' Exchange, through the Cowell Lime & Cement Company, almost twenty (20) years; Mr. George was President of the Builders' Exchange on June 11th, 1922, and prior thereto, and is now in his second year as President; D. B. Farquharson is a member of the Builders' Exchange and has been for some time, is not an office holder thereof, nor was he on June 21st, 1922; he is a member of the Industrial Relations Committee of the Builders' Exchange and has been for two or three years last past.

George T. Bowen, is a director of the Builders Exchange and has been for two years; D. S. Sullivan (D. J. Sullivan in the information) has been a member of the Builders' Exchange for some years and is now one of the Directors, has been for eight or nine years.

R. J. H. Forbes, is a member of the Builders' Exchange and is now secretary of the Board, was for several years, dropped out for one year and has been elected for the last two years.

Alexander Mennie is a member of the Builders' Exchange, is Treasurer thereof; has been a member of the Board of Directors for almost,—as long as witness has been with the Exchange.

C. G. Berg is a member of the Builders' Exchange for nine or ten [fol. 149] years, is a member of the Board of Directors and has been for about four years.

Thomas J. Campbell, is a member and has been a member for two or three years; Frank Mordecai is a member of the Exchange, is a member of some committee; has been a member of the Exchange for quite a few years.

Witness has in his possession the books of the Builders' Exchange; Mr. Forbes as Secretary of the Board, keeps the minutes of the meetings of the Builders' Exchange; witness is Secretary of the Central Council of the Exchange; the Industrial Association has its own Secretary.

Offered in evidence excerpts of the minutes of the Builders' Exchange dated June 14, 1921, as "Peoples Exhibit No. 1" which reads as follows:

PEOPLES EXHIBIT NO. 1

"The Builders Exchange 180-188 Jessie Street, San Francisco, California, June 14, 1921. A Special adjourned meeting of the Board of Directors of the Builders Exchange called this day at 2 o'clock P. M. to adopt the following resolution, a quorum being present with the Following: President, Chas. W. Gompertz; 1st vice president, W. H. George; 2nd vice president, Jos. B. Keenan; Treasurer, Alex. Mennie; Director, L. J. Neal; director J. A. Hart; director D. J. Sullivan; director James H. Pinkerton; Absent E. S. Rainey; absent J. D. McGilvray; Secretary Chas. M. Cadman.

The following resolution of June 11th, 1921, having been passed by the Central Council was presented and on motion was adopted.

'Resolved by the Central Council of the Builders Exchange all of the thirty-five crafts more or less affiliated with the said Exchange being present and participating, that preferences in deliveries of building materials within the County of San Francisco be made to those contractors abiding by the rules, regulations and decisions of [fol. 150] the Central Council of the Builders Exchange; and that the Central Council of the Builders Exchange take all necessary steps to keep the various crafts advised of the names of those persons and firms strictly observing its rules, regulations and decisions.'

The following resolution of June 13th, 1921, having been passed by the Central Council, was presented and on motion adopted:

The following resolution was presented to the Central Council for adoption:

'It was regularly moved and seconded and unanimously carried by a standing vote, that the following resolution be adopted:

'Resolved, that the Builders Exchange, through the Central Council, go on record as endorsing the actions of the Conference Committee and the Advisory Board in every particular in their efforts which have resulted in work starting June 13th, with endorsed wage scale and American Plan in effect.'

No further business appearing, the meeting adjourned to the call of the Chair.

Respectfully, Alex Mennie, Secty. pro Tem."

Alex Mennie whose name appears in the excerpt of the minutes, is the Alexander Mennie who is named in the Information as a defendant.

PEOPLE'S EXHIBIT No. 2.

introduced in evidence, is minutes of the meeting of the Central Council of the Builders Exchange, dated July 25, 1921, and is as follows:

"The Central Council of the Builders' Exchange. An adjourned meeting of the Central Council of the Builders' Exchange called to receive reports and take action, 21 associations answered roll call. President Chas. W. Gompertz in the chair. Chas. Wright formerly Oakland representative now taking charge of the Exchange Employment Bureau, 110 Jessie Street. Minutes of the meeting of July 20th read and approved with the addition of the motion, in [fol. 151] reference to the fine for nonattendance on Wednesdays at Roll Call, that the San Francisco Chapter of Architects be exempt from the fine. President Chas. W. Gompertz read the following communications: Letter from W. H. George, chairman Conference Committee enclosing communication from Mr. Walter Drew, Counsel of the National Erectors Association, an Open Shop clause for Builders Contract same referred to Legislative Committee. Copy of let-

ter mailed to Crafts on the Wednesday fine and in reference to daily calls at Employment Bureau, 110 Jessie Street filed. Letter from the Master Plumbers Association with copy of resolution as follows:

'San Francisco, Cal., July 25th, 1921.

The Builders Exchange, 180 Jessie Street, San Francisco, Cal.

GENTLEMEN: This is to inform you that at the regular meeting of the Master Plumbers Association held last Friday night, the following resolution was adopted.

Copy of Resolution

To the Board of Directors:

July 19, 1921.

We your Committee appointed to investigate and report on the advisability and possibilities of representation in the Builders Exchange, most respectfully report and recommend that the Master Plumbers Association, Incorporated, give its full support to the policy set forth by the Builders Exchange, and known as the American Plan, and we further sanction representation in the Builders Exchange by a member selected by those members now affiliated in the Builders Exchange.

(Signed) Alex Coleman, Geo. Y. Morton, C. Peterson, Frank J. Klimm.

The vote was taken by individual roll call, 70 members voting [fol. 152] yes and one member voting no.

R. W. Mackie, Assistant Secretary M. P. A. S. F., Inc.

(M. P. A. stands for Master Plumbers' Association.)

"Mr. Chas. M. Cadman was requested to report on the meeting of the State Builders Exchange, after a general report of the two meetings morning and afternoon of July 22nd, he spoke of conditions in Sacramento, as reported, which are not very satisfactory at the present time. However, a meeting is called at the Builders' Exchange of Sacramento for an evening this week at which President Gompertz and others are to address the Exchange on the workings and advantages of the American Plan. Mr. Jos. B. Keenan who has just returned from Los Angeles was invited to tell the Council of conditions there as he found them, speaking of the open shop conditions there he remarked that the success of Los Angeles was due almost directly to this condition as persons coming to the City of Los Angeles could secure employment in any branch of industry without any labor restrictions as applying to Unions, being imposed upon them and by this liberty of action not only remained as a citizen of Los Angeles but influenced their families, relatives and friends to come; incidentally speaking of some Union work being done there also that the sense of opinion there was in sympathy with

the movement here. Moved, seconded and carried that when we adjourn we do so until Wednesday July 27th, at 10 A. M. Some discussion followed and Secretary instructed to write the San Francisco Chapter of Architects inviting them to have their delegate or alternate present at the Wednesday meetings so they could keep in touch with the crafts through their reports which are in on that [fol. 153] day of the week. No further business appearing the meeting adjourned to Wednesday, July 27, at 10 o'clock A. M.

Respectfully, blank, Assistant Secretary."

Admitted that the aforesaid minutes in said "Exhibit No. 2" were duly adopted.

Jos. B. Keenan, mentioned in the minutes as one of the Directors *meetings* of the Builders' Exchange, and was present at the meeting held July 25, 1921.

"PEOPLE'S EXHIBIT No. 3"

was admitted as being the minutes of the Central Committee of the Builders' Exchange dated April 12, 1922, reading as follows:

"A Special Meeting of the Central Council called by President George was held this day at 1:30 p. m., a quorum being present, with W. E. George in the chair.

Roll call being taken, the Secretary reported as follows:

Associations answering roll call—35.

Associations excused from roll call—None.

Associations absent from roll call—8.

President George then announced the reason for calling this Special Meeting.

Mr. Warren McBryde, President of the Industrial Association was invited to address the meeting. Mr. McBryde stated that the Association intended to stand firmly on the American Plan, and that, if necessary, they would bring mechanics to the State from the east in order to keep the building industry moving on the American Plan. He appealed to the Exchange to assist him in making the American Plan 100 per cent successful.

Mr. Joseph Keenan offered the following resolution:

'Resolved that the Builders' Exchange, represented by its affiliated [fol. 154] crafts, reaffirms its allegiance to the American Plan and the Wage Award for the year 1922 of the Impartial Wage Board and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the Wage Award is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922.'

It was regularly moved and seconded that this resolution be

adopted. After a full discussion of the question the motion prevailed that a roll call be taken on the adoption of the resolution. The Secretary called the roll call of all the crafts and the result showed: 27 ayes; No noes.

Six of the crafts represented did not vote, stating that they would have to refer the resolution to their respective crafts. The resolution carried the necessary three quarters votes and was, therefore, adopted.

The members of the Builders' Exchange divided according to their business relations into crafts; not all building contractors of San Francisco belong to the Builders' Exchange.

People offered in evidence as Exhibit No. 4, excerpts of minutes of the meeting of the Builders' Exchange held April 14th, 1922:

PEOPLE'S EXHIBIT No. 4

"A regular meeting of the Board of Directors of the Builders Exchange was held this date at 11 o'clock a. m., a quorum being present with the following:

President W. H. George, 1st Vice President D. J. Sullivan, 2nd Vice President Joseph B. Keenan, 3rd Vice President George T. Bowen, Secretary R. J. H. Forbes, Treasurer Alex Mennie, Directors Charles W. Gompertz, C. S. Berg, J. A. Hart.
[fol. 155] Absent: J. D. McGilvray, Thomas Campbell.

The Manager read the following resolution which was adopted at the Special Meeting of the Central Council called by President George on Wednesday, April 12th:

'At a called meeting of the Central Council of the Builders Exchange held this 12th day of April, 1922, a quorum being present, It was Resolved that the Builders Exchange represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the Wage award for the year 1922, of the impartial Wage Board and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922.'

C. W. Gompertz moved that the action of the Central Council be ratified and that the resolution be adopted by the Board of Directors. A roll call was ordered taken and the result showed the unanimous vote in favor of adoption."

Admitted that the W. H. George, the D. J. Sullivan, the George T. Bowen, the R. J. H. Forbes, the Alex Mennie, the C. S. Berg (C. G. Berg in the Information) are the persons named as defendants in the Information.

The Exchange employed a man by the name of J. L. Clymer the latter part of 1921 and the first part of 1922, as **Manager**; after four or five months his term of office was cancelled.

PEOPLE'S EXHIBIT No. 5,

is as follows:

"Central Council of the Builders Exchange

An adjourned meeting of the Central Council of the Builders Exchange called to receive reports and take action. 29 Associations [fol. 156] answered Roll Call. Chas. W. Gompertz in the chair, Chas. Wright, Oakland representative in attendance. The minutes of the meeting of June 10th were read and approved as read. Reports of Committees. Conference Committee reported progress. Scouting Committee reported progress. Charles Wright Oakland representative, reported progress. President Chas. W. Gompertz read an editorial from the Journal on the trend of events, which editorial was received with applause. A letter was also read by President Gompertz from the Advertising and Publicity Service; also reported a telephone conversation with Mr. Hammond of the Hammond Lumber Company on labor and material conditions. Copy of letter of the Builders Exchange of Alameda County to the San Francisco Chapter of Architects was presented and read, on motion filed. Copy of proposed letter to be sent to the Grand Jury presented by President Gompertz, on motion duly seconded and carried that the letter as outlined by sent. Chas. Gunn after a few remarks on the subject presented the following Resolution:

'Resolved, by the Central Council of the Builders Exchange all of the thirty five crafts, more or less, affiliated with said Exchange being present and participating that preference in deliveries of building materials within the County of San Francisco be made to those contractors abiding by the rules, regulations and decisions of the Central Council of the Builders Exchange; and that the Central Council of the Builders Exchange take all necessary steps to keep the various crafts advised of the names of those persons and firms strictly observing its rules, regulations and decisions.'

Regularly moved, seconded and carried unanimously that above [fol. 157] resolution be adopted. General Discussion followed on the various phases of the situation. President Gompertz in answer to a question on the answer to the letter of P. H. McCarthy of the 10th, read an open letter published in all the papers. Attention of the crafts was called to the necessity of answering the Secretary's letter in reference to all firms in the line of business of the individual craft and not members of the Builders' Exchange, the answers being important are requested to be in as soon as possible. No further business appearing the meeting adjourned to Monday, June 13th at 10 o'clock a. m.

Respectfully, S. A. D. Schenck, Assistant Secretary."

The Central Council of the Builders Exchange is composed of 44 or 45 crafts, each craft composed of its special business; Central Council is composed of the delegate and alternate of each craft.

All excerpts of minutes heretofore read are minutes of meetings held at the office of the Builders' Exchange at 180-188 Jessie Street, San Francisco, California.

Cross-examination:

DEFENDANTS' EXHIBIT No. 1

Resolution adopted April 29, 1922, by the Industrial Relations Committee of the Builders Exchange, at meeting held such date, reads as follows:

"The Industrial Relations Committee at its meeting on Thursday evening, April 27th, passed unanimously a resolution authorized by the resolution of the Central Council dated April 12, 1922, to the effect that all members of the San Francisco Builders Exchange operating outside of the City and County of San Francisco must comply with the American Plan and the Builders Exchange wage [fol. 158] scale the same as they do in San Francisco. Members will please take notice.

The bricklayers' situation is well in hand. Many of our members are proceeding with their work under the American Plan, and it is hoped that in the near future the entire craft will be at work.

The plastering situation is proceeding favorably. A number of American Plan jobs are running, and the indications are that the Master Plumbers will shortly accept the situation, and like all other loyal members of the Builders Exchange, operate on the American Plan.

The plumbing situation, as far as the members of our Exchange is concerned, is gaining strength every day. Many plumbers are arriving, and it is expected that the plumbing business will be running on a normal basis, American Plan, within the next few days.

Builders Exchange of San Francisco. W. H. George, President and Chairman Industrial Relations Committee."

Mr. L. E. CRAWFORD, witness on behalf of the People, testified as follows:

Address, 3827 Clark Street, Oakland, Calif.; occupation, Secretary of the Industrial Relations Committee of the Builders Exchange, since April 13, 1922; before that time employed by the Henry Cowell Lime & Cement Company, San Francisco, since October 1920; Mr. W. H. George is General Manager of the Henry Cowell Lime and Cement Company, and is also Secretary thereof.

The Industrial Relations Committee of the Builders' Exchange is composed of W. H. George, Chairman; D. B. Farquharson, George T. Bowen, C. S. Allred and John Biller, the last two being appointed

[fol. 159] during March or April, 1923; prior to March or April, 1923, the members were George, Farquharson, Bowen, Wagner and Haymann; W. H. George was Chairman at that time. During the latter part of 1922 or during the summer thereof, Mr. Haymann left for Europe; Mr. Allred was appointed temporarily in his place; the members of the Industrial Relations Committee of the Builders Exchange are appointed by the President of the Builders Exchange. Mr. W. H. George is President of the Builders Exchange. All of the committees of the Builders Exchange are appointed by the President. Witness is employed as Secretary of the Industrial Relations Committee of the Builders Exchange; his duties consist of issuing permits for building materials; issues permits for cement, lime and plaster, plaster products, rock, sand, gravel, brick and clay products, and lath, also wall board, button board, Keene cement, wire lath, metal lath of all kinds and wood lath; has been issuing such permits since April 13, 1922, under instructions of Mr. George, Chairman of the Industrial Relations Committee of the Builders Exchange; Mr. George instructed witness to issue permits for building materials on jobs that were running American Plan in every craft.

Mr. George explained to witness that his interpretation of the American Plan; it is where Union and non-union mechanics work together on the same jobs without discrimination. Mr. George did not tell witness that it was a part of the American Plan that a building contractor could not hire a Union foreman if he so desired.

Witness does not recall any conversation with Mr. Wm. H. George concerning the employment of non-union foremen, there being but one foreman on the job, and Mr. George did not give witness any instructions in regard to foremen; no one gave witness any instructions regarding foremen.

PEOPLE'S EXHIBIT No. 6

admitted to be a photostatic copy of a letter bearing the signature of the Builders Exchange of San Francisco, W. H. George, President and Chairman of the Industrial Relations Committee, is as follows:

"The Builders Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Calif., April 15, 1922.

DEAR SIR: The Central Council of the Builders Exchange on April 12th, 1922, passed the following resolution:

At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, it was resolved that the Builders Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and

instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922.

This was concurred in by the Board of Directors at their meeting held on Friday, April 14th, and is in full force and effect. It is called to the attention of the committee that your shop is still running on the Union basis. On receipt of this letter will you immediately correct this situation? On common with all other Master Plumbers your business must be run on the American Plan. Will you kindly call up the writer and advise him that this action has been taken?

Yours very truly, Builders Exchange of San Francisco. W.
H. George, President and Chairman Industrial Relations
Committee."

[fol. 161] Witness does not recall having seen People's Exhibit No. 6, and does not know to whom it was sent.

PEOPLE'S EXHIBIT No. 7

mimeographed letter sent to all members of the Builders Exchange, dated April 13, 1922, is as follows:

The Builders' Exchange (Incorporated July 5, 1890), 180-188
Jessie Street. Phone, Sutter 6700

San Francisco, Calif., April 12, 1922.

to all members of the Builders' Exchange:

The Central Council of the Builders' Exchange at a regularly called meeting held April 12, 1922, a quorum being present, adopted the following resolution:

'At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922.'

Acting under the authority given to it by the above resolution, the Industrial Relations Committee of the Builders' Exchange announces that for the faithful carrying out of the American Plan and maintenance of the Impartial Wage Board scale, the following materials have at once been put under the permit system; Cement,

Lime, plaster, ready mixed mortar, rock, sand and gravel, common [fol. 162] brick, fire and face brick, terra cotta, all clay products.

You are particularly requested to make sure before applying for a permit that your job is running on the American Plan. All jobs will be regularly inspected, permits will not be again granted to any member or non member of the Builders' Exchange who secures a permit and then does not run his job on the American Plan and pay strictly the Builders' Exchange wage scale and no more in any way, shape or form.

Yours very truly, Builders' Exchange of San Francisco, by
Committee on Industrial Relations, W. H. George, Chair-
man.

PEOPLE'S EXHIBIT No. 8

Form letter issued from the office of the Builders' Exchange and used during 1921; addressed to contractors who were not adhering to the American Plan of employment (considered merely a draft) reads as follows:

"Copy

The Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., — — —, 192-.

"DEAR SIR: To day's inspection reports on your job located at — shows that the following crafts are employed, and the number of Union men and non union men are employed in each craft.

Craft	Non-union men	Union men
.....
.....
.....

In the carrying out of the American Plan the proportion should be nearer 50% of each.

The inspection report also shows that the foreman is a Union man. He must be a non union man. See Trade Rule No. 12.

Trusting that for the proper carrying out of the American Plan [fol. 163] that you will correct this situation at once. We remain,

Yours very truly, Builders' Exchange of San Francisco, by
its Conference Committee, blank, Chairman."

In the lower left hand corner of the letter appears the lettering: "W. H. G-s," showing the letter to have been dictated to stenographer by W. H. George.

PEOPLE'S EXHIBIT No. 9

an official publication of the Builders' Exchange, but no longer being published, reads as follows:

"Builders' Exchange, Incorporated July 5, 1890.

Vol. 1, No. 16

San Francisco, California, April 15, 1922.

Central Council Takes Positive Action

On April 12th, at a special meeting of the Council, called by President George for the purpose of taking official action to meet the strike situation, the following resolution was adopted by a roll call without a dissenting vote:

Resolved: That the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award for the year 1922, of the Impartial Wage Board, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922.

Only One Thing to be Done

Every member of the Exchange must stand firmly behind the machinery created by the Exchange to meet the strike situation which confronts us. According to the newspapers, the unions are not striking for more wages or for better hours, but in protest against the American Plan. The public generally, and the Builders' Exchange in particular, feel that the action on the part of the Labor [fol. 164] Council to force this issue on the eve of the biggest building area since the big fire is unwarranted, and, therefore, every member of the Exchange should stand as one man and see this fight through to the finish. The permit system has gone into effect, with the approval of the building material interests, and no one need apply for a permit unless he is running a strictly American Plan job and agrees to pay the wage scale as adopted by the Builders' Exchange. The permit office has opened, equipped with a full crew sufficient to care for all applicants without delay. A crew of inspectors will begin operations immediately. Every member is cautioned not to start any job until he is sure the job is started right.

New Members.—The applications of the following persons were approved at the meeting of the Board of Directors held April 7th; Peterson Bros., Sheet Metal Works, 150 Steuart Street; Carberry & Stanners, Glass and Glazing, 3652 Geary St.; Sea Beach Electric Co. 1023 Guerrero.

C. W. Gompertz Goes to Salt Lake City

The Board of Directors appointed C. W. Gompertz as a delegate to represent the Exchange at a great Western conference of building interests now in session at Salt Lake City. If the open shop is to be a complete success it is absolutely necessary that it be universally adopted. An open shop policy in one city and a closed-shop policy in an adjoining city tends to demoralize building conditions in both places. It is the purpose of this conference to launch plans that will make for uniformity.

Builders' Exchange.

The President's Corner

[fol. 165]

April 14, 1922.

The attention of all members of the Builders' Exchange is called to the letter issued by the Industrial Relations Committee under date of April 13, 1922.

The permit system is again at work so far as cement, lime, ready mixed mortar, plaster, red brick, fire and face brick, terra cotta, clay products, and rock, sand and gravel is concerned. All members of the Builders' Exchange in applying for permits must have in mind that they are required to strictly carry out the American Plan and to pay the Builders' Exchange wage scale. Every member and non-member of the Builders' Exchange will be treated with the same exact fairness.

Don't ask for a permit unless you intend to comply.

Any person receiving a permit and not complying need not apply for any more permits.

Now is the time to show a united front. Let's get together, stand together and the present controversy will be of short duration.

Builders' Exchange of San Francisco. W. H. George, President and Chairman Industrial Relations Committee.

Trade School for Plasterers

The trade school for plasterers which the Industrial Association has had under consideration for some time is at last about ready to begin its operations.

The Association has secured a lease on an excellent structure conveniently located for transportation purposes in the heart of the industrial district. Some preliminary work to make the place ready for use as a plasterers' school has to be completed before the first [fol. 166] group of apprentices can be taken in and instruction actually begun.

The floor area available, approximately 9,000 square feet, makes it possible by the erection of temporary walls lathed on both sides, to provide a very considerable available surface upon which the apprentices in the school can work.

The Association has secured the services of a competent instructor who has had experience along these lines. If the demand for in-

struction is sufficiently pressing the Association also has available an additional instructor whom they will put on.

After the school is in operation for a short time it is intended to open an ornamental division in addition to plain work, in which the more complicated and difficult portions of the plastering business will be taught.

The present plan is to conduct the school for twelve weeks. For those boys who are not already apprenticed to the trade the work will be continuous. For those apprentices, or for whom places are found, the plan will be to alternate them three weeks on a job and three weeks in school.

The Association will be very glad to have the members of the Builders' Exchange who are in touch with boys who might be interested in free instruction of this sort refer them to the Association for registration in the School. Further details giving time and place of opening, and other necessary information will be forthcoming in another announcement to be made by the Association within the next week or ten days.

Employment Department

Report on the Activities of the Employment Department for the Week of April 3, 1922

Fourteen men registered as mechanics seeking employment.
[fol. 167] Seventy-nine men were sent out to jobs and were classified as follows:

Foremen, 1; Bricklayers, 2; Carpenters (finish), 16; Carpenters (form and frame), 20; apprentices, 1; cement finishers, 1; laborers, 12; lathers, 10; painters, 11; paper-hangers, 1; plasterers, 3; sheet metal, 1. Total, 79.

For the quarter ending March 31, the Employment Department has placed 1,060 men, as indicated by the following list. In some of the crafts the number of men to whom employment has been given will appear relatively small. This is to be accounted for by the fact that a few of the crafts have undertaken to list and place applicants in their respective crafts. The crafts now helping our employment office in this manner are—Cabinet Manufacturers' Association, Electrical Contractor's and Dealers' Association, Planing Mill Owners' Association, Master Painters' and Decorators' Associations, Master Plumbers' Association, Sheet Metal Contractors' Association.

January 1 to March 31, 1922

Apprentices, all crafts, 19; bevelers, polishers and buffers, 3; Bricklayers, 41; Cabinet Makers, 3; Carpenters, finish, 246; Carpenters, rough, 232; Cement finishers, 13; Electricians, 9; Elevator Constructors, 13; foremen, 13; Glaziers, 2; Hodcarriers, 25; House-movers, 4; Housesmiths, 10; Iron Workers, 1; Laborers, 177; Lath-

ers, 66; Millmen, 35; Painters, 22; Paperhangers, 3; Plasterers, 70; Plumbers, 7; Roofers, 5; sheet metal workers, 11; shinglers, 7; Steamfitters, 1; strippers, 2; Superintendents, 1; Tile setters, 8; Miscellaneous, 11. Total 1,060.

A New Trowel for Bricklayers

The Mann trowel has been introduced on the market and it is [fol. 168] claimed by the inventor to greatly reduce the cost of brick construction. This trowel can be handled by a novice and, in fact, has been approved by the Secretary of the National Brick Manufacturers' Association. It is claimed that with this trowel twice or three times as many brick can be laid in a given time as are laid by bricklayers with the old fashioned trowel. A complete story of this trowel is printed in the Clayworker, the organ of the Brick and Tile Manufacturers' Association.

The conditions of membership in the Builders' Exchange are so moderate and its purpose so clean-cut and progressive that there can be no adequate excuse for any contractor or dealer in the local building industry neglecting to affiliate therewith, and with his proper Craft Council. Failure to do so must at the very least be taken as evidence either of opposition to the American Plan or of craven unwillingness to bear a man's part in support of a program at once considerate, progressive and vital to industrial peace and prosperity. In either case such an individual or concern, irrespective of other considerations such as personal popularity, wealth and tempting offers of apparent immediate advantage, is an undesirable factor in business and should be made to feel the necessity of aligning with the forces of right. There is only one legitimate way that this can be done, and that is by observing the simple injunction—Business with members.

Builders' Exchange.

Notes and Comment by E. T. T.

The California State Builders' Exchange has been hibernating in [fol. 169] sleepy seclusion for the past year, as utterly useless during our troublous times as though it did not exist.

Employers of the building industry may never agree on all questions. In one or two localities even now they are apparently convinced that their advantage lies in compliance with the exactions and restrictions of organized labor. But there is common ground upon which all fair-minded men of similar occupation may meet and, given a definite group of individuals, it remains only to ascertain and define certain purposes which all desire to see accomplished to bring out the fact that associated effort in behalf of these purposes is an economic necessity.

* * * * *

Through the personal efforts of the officers and certain members of our local Exchange much has been accomplished in developing effective local organizations throughout the State, but if these efforts are to bear perennial fruit they must be co-ordinated and supplemented by an active State organization.

It is not to be expected that employers will quickly perfect as *though* an organization as labor has. By the very nature of their calling contractors are individualists. Their basic relations with one another are competitive rather than co-operative. They have little natural sympathy with one another, even in business misfortune. Each goes it alone and expects the other to do the same and that the devil will take the hindmost. Experience has taught them that selfish interest is paramount in the human heart and that their business rivals are not to be trusted. The success of the wage earner, on the other hand depends greatly on his willingness and ability to co-operate with his co-workers on the task in hand. Co-operation in his private interest under inspiring leadership is there-[fol. 170] fore quite natural and easy.

Statewide organization, however, is essential to the maintenance of stability and efficiency in the building industry. Organized forces are going to control the situation. Either the employers will control, or employers and labor unions jointly, or the unions alone, will control. The unions are ready. What are we going to do about it? And when?

* * * * *

Cleveland has been in the throes of a general building strike for a month or more. The Tie-up is reported practically complete. Unions are charged with repudiating agreements, rejecting conciliatory proposals of the Building Trades Employers' Association, refusing a fair and just arbitration proposal and refusing to consider calling off the strike. Here, as in many other centers throughout the country, the arrogance and irresponsibility of labor organizations bid fair to solidify public sentiment against them and their proposals.

Cement manufacturers of Oklahoma have been ordered by the State Corporation Commission to sell cement, when ordered in car-load lots, direct to any cash purchaser at the same price as quoted to dealers.

* * * * *

Responsibility for the substantial correctness of official quantity estimates on the basis of which bids are advertised for rests with the city or municipality issuing the same, according to the Oregon Supreme Court. But in order that damages be recoverable the error must be shown to have been due to carelessness, negligence or incompetency of the official or employee who made it. [fol. 171] A contract provision to the effect that the decision of the architect or engineer shall be final on questions arising as to what

work is covered by the contract or how the work shall be done, does not make it so. When the contractor has performed work in accordance with such decision, it becomes a question of law whether or not he is entitled to compensation for any particular item of work done.

* * * * *

Contracts awarded during March as compiled by the General Contractors, disregarding all jobs costing less than \$3,000 show a substantial increase over the record for February. In San Francisco proper 289 contracts amounted to \$5,065,738.00 an increase over February of 34 per cent in number and 79 per cent in volume. Six jobs amounted to \$100,000.00 or over apiece. Suburban work comprised 375 jobs amounting to \$3,572,763.00, an increase of 27 per cent in number and 11 per cent in value over February. Three jobs amounted to \$100,000.00 or more apiece.

* * * * *

Business with members—that's reciprocity. This injunction applies equally to general contractors, sub-contractors and material men. Sub-contractors who deal preferentially with general contractor members of the Exchange may logically expect similar consideration in return; but not otherwise. Material men who deal preferentially with sub-contractor and general contractor members may reasonably expect like treatment in return; but not otherwise. This is not only fair play; it's common sense.

Think it over.

* * * * *

[fol. 172] The vindictiveness of some labor leaders was illustrated recently in Pittsburgh, Pa., where a committee of the bricklayers' union upset the community by making public charges of a sensational nature that work on certain school buildings was not being done in accordance with the specifications, the official investigation that followed under direction of the architect showing the charges to be utterly unfounded.

* * * * *

Arrayed against the American Plan are not so much the workmen, whose rights as employes we have obligated ourselves to observe and protect, but organized labor as a co-ordinated going concern, zealous of its hard-earned, though much abused privileges, whose principles and performance are largely determined by able officials of long tenure, inspired alike by life long devotion to a national ideal and by the necessity of continuing to gain a liv-lihood in the most lucrative, if not the only, way they know.

* * * * *

In Chicago all contractors working under the Landis award and pledged to co-operate with the Citizen's Committee are listed and officially published broadcast to the public, as well as the contractors and dealers, may determine intelligently whom to patronize. The average man is not a mind reader and must be shown.

No Brains

The shades of night were falling fast,
The fool "stepped on it" and rushed past.
A crash—he died without a sound;
They opened up his head and found—
Excelsior!—Boston Transcript.

Builders' Exchange.

[fol. 173] Builders' Exchange, San Francisco, Cal.

Board of Directors

President W. H. George, First Vice President D. J. Sullivan, Second Vice President Jos. B. Keenan, Third Vice President Geo. T. Bowen, Secretary R. J. H. Forbes, Treasurer Alex Mennie. Directors: Chas. W. Gompertz, C. C. Berg, J. A. Hart, J. D. McGilvray, Thos. Campbell.

Board of Directors' Committees

On finance.—Joseph B. Keenan, Chairman; D. J. Sullivan, R. J. H. Forbes.

On Rooms.—George T. Bowen, Chairman; C. G. Berg, Thomas Campbell.

On Publicity.—J. A. Hart, Chairman; Frank C. Herrick, Clarence Pratt.

On entertainment.—Jos. B. Keenan, Chairman; D. B. Farquharson, C. Holloway, Jr.

On Grievances.—James H. Pinkerton, Chairman; Joseph B. Keenan, Thomas Campbell, Geo. R. Perkins, R. B. Cleghorn.

On Membership.—Alex. Mennie, D. J. Sullivan, C. G. Berg.

Auxiliary Committee on Membership.—L. J. Neal, E. S. Rainey, Charles M. Cadman.

Central Council Committees

On Intereraft Relations.—D. B. Farquharson, chairman; A. Heyman, D. J. Sullivan, Geo. Wagner, Thomas Campbell.

On rules and By-laws.—Chas. W. Gompertz, Chairman; C. E. Rhinehart, D. J. Sullivan, R. J. H. Forbes, Jas. H. Pinkerton.

On Safety.—J. A. Hart, chairman; E. G. Guyett, Thos. J. Bennett, Geo. T. Bowen, J. D. McGilvray.

On Public Affairs.—Charles W. Gompertz, chairman; R. J. H. Forbes, Geo. R. Chambers, Frank Mordecia, J. D. McGilvray.

On Legislation.—D. J. Sullivan, Chairman; Alex Mennie, J. A. Hart, D. B. Farquharson, Wm. Chatham.

On Industrial Relations.—W. H. George, Chairman; D. B. Farquharson, Geo. T. Bowen, Geo. Wagner, A. Heyman.

Sergeant at Arms: Walter Jamison.

Loyalty

The following Bulletin was recently issued to members of the General Contractors of San Francisco:

[fol. 174] 'During the past year every effort has been made through the Builders' Exchange to accomplish an effective organization of employers in the building industry in order that in the future the employer may be protected in the management of his own business without interference of organized labor, and in order that there may be established and maintained such fair prices and other conditions as will stimulate building construction.

'The issue has been so clean cut and the terms of admission so moderate that there can be no reasonable excuse for any local concern connected with the building industry neglecting to affiliate with the Exchange. Failure, therefore, on the part of any concern to affiliate must be taken as evidence that such concern is unfriendly to the principles and purposes to which every member is obligated.

'While it is not the purpose of this organization nor of the Exchange to establish a 'black-list', members are requested, in the name of business common sense and the loyalty one owes his fellow members, to do business so far as possible with members in good standing of the Exchange.

'If in any case any member of this organization feels that their competition and reasonable prices are not obtainable from any group of members of the Exchange, he is requested to take the matter up with this office with a view to having the matter handled in a peaceful, orderly manner so that we may encourage good work in the organization and build up rather than disrupt the same. In this connection it is well to bear in mind that undercutting undermines [fol. 175] good business and that the best goods are not offered on the bargain counter.

'Let us give heed to the foregoing in connection with every job and thus demonstrate that we are sensible of the universal truth of our country's slogan—United we stand; divided we fall.

E. T. Thurston, Secretary."

"Save-the-Surface" Campaign

Organization of the 1922 "Save-the-Surface" campaign, which is to be held in seven counties bordering San Francisco Bay, May 1 to 14, was completed at a meeting of 300 paint representatives in the Commercial Club Monday night. During the week since the meeting committees have been actively at work and the details of the campaign are rapidly taking definite form.

The first step is the raising of a \$15,000 fund to be used in advertis-

ing the paint industry in newspapers, on billboards and other ways. D. J. Tight, Chairman of the Finance Committee reported that approximately \$5,000 had been pledged. All during the week committees have been at work in San Francisco, Oakland, Berkeley and Alameda, with great success.

The undivided support of master painters of San Francisco and Alameda County has been pledged, and the master painters are working actively in the interest of the paint campaign. Salesmen, retailers, wholesalers and manufacturers have pledged their support to the campaign.

Nine committees, totaling more than fifty members of the paint fraternity, have been appointed. Headquarters for the campaign have been established at 609 Underwood Building.

The complete organization includes the following committees:
[fol. 176] Executive Committee.—A. W. Scott, chairman; C. B. Woodruff, G. M. Goldberg.

General Committee.—A. W. Scott, chairman; C. B. Woodruff, vice-chairman; D. J. Tight, G. M. Goldberg, J. L. Ash, G. T. Stankard, J. C. Downey, O. S. Orrick, M. Friedman, N. D. Bergeron, J. W. Realy, Charles Sparwasser, R. J. York, M. Cohen, G. Bowen, F. La Torres.

Finance Committee.—D. J. Tight, chairman; C. B. Woodruff, J. L. Ash, J. C. Downey, O. S. Orrick, C. H. Adams.

Advertising Committee.—G. M. Goldberg, chairman; G. T. Stankard, H. M. Munroe, A. G. Ross, A. E. Lawrence.

Stunts Committee.—H. W. Aikins, chairman; L. F. Hikelman, G. O. Turnley.

Sales Committee.—E. F. Kern, Chairman; Jack Reynolds, D. Schindler, G. T. Stankard, S. R. Dannerbaum, F. W. Wansner, W. Taylor, J. V. Toland.

Store and Window Display Committee.—Dan Maher, chairman; F. W. Wansner, David Williamson, W. L. Turner.

Auditing Committee.—S. Magner, H. McManus, G. Bowen.

Speakers' Committee.—C. H. Adams, chairman; L. W. Wolcott, J. C. Downey, F. W. Wansner, W. A. Emerick."

Mr. O'Grady: I will read into the record, if the Court please, the following portions thereof (reading):

"Only one Thing to be Done.—Every member of the Exchange must stand firmly behind the machinery created by the Exchange to meet the strike situation which confronts us. According to the newspapers the unions are not striking for more wages or for better hours, but in protest against the American Plan. The public generally, and the Builders' Exchange in particular, feel that the action on the part of the Labor Council to force this issue on the eve of the biggest building era since the big fire is unwarranted, and, therefore, every member of the Exchange should stand as one man and see this fight through to a finish. The permit system has gone into effect, with the approval of the building material interest, and no one need apply

for a permit unless he is running a strictly American Plan job and agrees to pay the wage scale as adopted by the Builders' Exchange. The permit office has opened, equipped with a full crew sufficient [fol. 177] to care for all applicants without delay. A crew of inspectors will begin operations immediately. Every member is counseled not to start any job until he is sure the job is started right."

"The President's Corner.—April 14, 1922. The attention of all members of the Builders' Exchange is called to the letter issued by the Industrial Relations Committee under date of April 13, 1922.

The permit system is again at work so far as cement, lime, ready mixed mortar, plaster, red brick, fire and face brick, terra cotta, clay products, and rock, sand and gravel is concerned. All members of the Builders' Exchange in applying for permits must have in mind that they are required to strictly carry out the American Plan and to pay the Builders' Exchange wage scale. Every member and non-member of the Builders' Exchange will be treated with the same exact fairness.

Don't ask for a permit unless you intend to comply.

Any person receiving a permit and not complying need not apply for any more permits.

Now is the time to show a united front. Let's get together, stand together and the present controversy will be of short duration.

Builders Exchange of San Francisco. W. H. George, President and Chairman Industrial Relations Committee."

PEOPLE'S EXHIBIT No. 10

is a form letter issued by the Builders' Exchange on April 17, 1922, and mailed to all citizens who applied to the Board of Public Works of San Francisco for an official permit to construct or repair buildings. It is a printed letter and reads as follows:

[fol. 178] "Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 17, 1922.

Charles Murphy, 3028 Broderick Street, City.

DEAR SIR: This Committee notes that you have made application for building permit for a 2 story & Basement frame (2 flats) at W. 9th Ave. 125 N. California.

On behalf of the Builders' Exchange sincerely trust that you will only employ American Plan contractors on this work.

American Plan Contractors in every craft you will find as members of the Builders' Exchange affiliated with their own craft.

If you desire a list of American Plan contractors in any of the crafts, we shall be glad to supply same on application.

Yours very truly, Builders' Exchange of San Francisco. W. H. George, President and Chairman Industrial Relations Committee."

It is stipulated that all letters with initials "W. H. G." thereon were dictated by Mr. W. H. George.

PEOPLE'S EXHIBIT No. 11

A form letter issued during 1921 by the Builders' Exchange to notify contractors that they were not conforming to the American Plan of employment, which reads as follows:

"The Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., Oct. 5, 1921.

E. Sugarman, 4415 Calif. St., San Francisco, Cal.

DEAR SIR: Today's inspection report on your job located at 14 Ave. 100 N. of Balboa shows that the following crafts are employed, and the number of union and non-union men employed in each craft:

[fol. 179] Crafts, Plumbers, non-union, 1; union men, 1.

In the carrying out of the American Plan the proportion should be nearer 50 per cent of each.

The inspection report also shows that the foreman is a union man. He must be a non union man. See trade rule No. 12.

Trusting that for the proper carrying out of the American Plan that you will correct this situation at once, we remain,

Yours very truly, Builders' Exchange of San Francisco, by its Conference Committee, W. H. George, Chairman."

('n the lower left hand corner, "WHG—s.")

Mr. Sugarman at the time of the date of People's Exhibit No. 11, was a Plumbing Contractor.

PEOPLE'S EXHIBIT No. 12

consists of four (4) paper writings entitled, "Release for Building Materials;" are duplicats of permits issued to Contractors by witness and are as follows:

(Paper Writing No. 1)

"Date, July 5, 1922. No. 11693. Release for building materials. Name, McDonald & Kahn. Location of job, cor. Sacramento & Power. Materials, 1 c/1"—(evidently meaning 1 carload—"grey cement. Builders' Exchange, by ———, Chairman Strike Committee."

(Paper Writing No. 2)

"Date, June 8, 1922. No. 9361. Release for building materials. Name, L. J. Neal. Location of job, S/S"—evidently meaning south side—"Pine W. of Leavenworth. Materials, 65 yards Plaster Mortar. Builders' Exchange, by ———, Chairman Strike Committee."

(Paper Writing No. 3)

"Date, May 19, 1922. No. 7707. Release for building materials. [fol. 180] Name, Ginsberg Title Company. Location of job, Cor. De Haro 22nd St. Materials, 2 yards gravel, 2 yards river sand. Builders' Exchange, by ———, Chairman Strike Committee."

(Paper Writing No. 4)

"Date, April 20, 1922. No. 5006. Release for Building Materials. Ralph McLaren & Company. Location of job, Anglo-London Bank. Materials, 10 M Partition tile—(the "M" means thousands—10,000—). Builders' Exchange, by ———, Chairman Strike Committee."

The aforesaid Exhibit No. 12, are copies of permits issued by witness as Secretary of the Industrial Relations Committee of the Builders' Exchange to contractors, to whom they were addressed or to their representatives. At that time Mr. W. H. George was Chairman of the Strike Committee. Permits for the release of building materials are issued consecutively; during 1921 there were six to eight thousand. When witness became Chairman on April 23, 1922, of the Bureau issuing permits it inaugurated a new series, but since it has been issuing permits it has issued 28,000, approximately, since April 13, 1922; prior to that time there were six to eight thousand issued.

PEOPLE'S EXHIBIT No. 13

consists of four (4) paper writings, and are pledges that a contractor signs pledging that the job will be run on the American Plan, and are signed by the contractor in the presence of the witness, or some one connected with the Department of the Industrial Relations Committee of the Builders' Exchange, and when signed are delivered to the witness as Secretary of the Industrial Relations Committee of the Builders' Exchange for a permit. The four (4) cards read as follows:

[fol. 181] "No. 1.—Date, April 26, 1922. I (underneath) we, hereby state that this job (underneath) shop, will be run on the American Plan in all crafts and pay the wage scale of the Impartial Wage Board. Location: S. E. corner 8th and Howard Street. Kind

of work: Concrete building. New factory building. Permit No. 5379-82. (Signed) Cahill Brothers, John R. Cahill. 1,200 Barrels gray cement; 1,000 yards rock or gravel; 500 yards sand."

"No. 2.—Date, June 6, 1922. I (underneath) we, hereby state that this job (shop) will be run on the American Plan in all crafts and pay the wage scale of the Impartial Wage Board. Location: Standard Oil Building, Bush and Sansone. Kind of work: (Not indicated.) Permit No. (blank). (Signed) Lindegren Company by A. F. Lindegren."

"Third.—Date July 15, 1922. I (we) hereby state that this job (shop) will be run on the American Plan in all crafts and will pay the wage scale of the Impartial Wage Board. Location N. W. corner Sutter and Kearney. General Contractor, Heyer. Kind of work: Brick work. Permit No. 12645-48. (Signed) Emil Hogberg, H-o-g-b-e-r-g."

"No. 3 (sic).—Date July 18, 1922. I (we) hereby state that this job (shop) will be run on the American Plan in all crafts and pay the wage scale of the Impartial Wage Board. Location 10 3rd Street. Alteration. Kind of work, plastering. Permit No. 12^c 26-7-8-9. (Signed) F. V. Mecklenberg. 1 barrel putty, 1 sack finish plaster, 2 sacks hard wall, 2 sacks gray cement, 4 barrels same."

PEOPLE'S EXHIBIT NO. 14.

a publication, the official organ of the Builders' Exchange, is published at the date of its issue, entitled "Builders' Exchange, Vol. 1, No. 18, San Francisco, California, April 29, 1922.

The President's Corner.—April 29, 1922. The Industrial Relations Committee at its meeting on Thursday evening, April 27th, passed unanimously a resolution authorized by the resolution of the Central Council dated April 12, 1922, to the effect that all members of the San Francisco Builders' Exchange operating outside of the City and County of San Francisco must comply with the American Plan and the Builders' Exchange wage scale the same as they do in San Francisco.

Members will please take notice.

The bricklaying situation is well in hand. Many of our members are proceeding with their work under the American Plan, and it is hoped that in the near future the entire craft will be at work.

The plastering situation is proceeding favorably. A number of American Plan jobs are running, and the indications are that the Master Plasterers will shortly accept the situation, and like all other loyal members of the Builders' Exchange, operate on the American Plan.

The plumbing situation, as far as the members of our Exchange is concerned, is gaining strength every day. Many plumbers are arriving, and it is expected that the plumbing business will be running on a normal basis, American Plan, within the next few days.

Builders' Exchange of San Francisco. W. H. George, President and Chairman Industrial Relations Committee.

Virtue Has Its Own Reward

George Wagner, General Contractor, has just completed a million [fol. 183] dollar project in Palo Alto at less than the guaranteed cost, and in appreciation of his services he has been handed a new job of \$600,000.

Mr. Wagner did all this work on a strictly non-union basis, as Palo Alto is in the jurisdiction of the San Jose B. T. C., and no union men were allowed to work on his job. Thus proving that large building projects can be undertaken and completed with non-union men at less cost than with union men.

New Home for the Exchange

The Board of Directors is taking definite action in the matter of working out the problem of a new, up-to-date and adequate headquarters for the Exchange.

It has been the feeling for some time that the Exchange should have a Class A income-producing building located in the heart of the financial district.

President George has appointed the following committee to make an exhaustive study of all possibilities as to location, costs, size, rentals, etc.:

Chas. W. Gompertz, Chairman; D. J. Sullivan, R. J. H. Forbes.

The findings of this committee will be presented to the members of the Exchange at a special meeting to be called in the near future.

The New Directory

At last we are ready to make deliveries. Each member of the Exchange is entitled to one loose-leaf leather bound copy. No deliveries will be made except through him. Out-of-town members will receive theirs by mail.

[fol. 184] If you want additional copies they may be had for \$1.50 (leather bound), or 50 cents for the paper bound edition. Order these through Heine.

Every effort has been made to make this directory 100% accurate. Undoubtedly there will be found a few minor errors, or some members may not have all the classification desired, but so far as we could get the information from the members, both by mail and phone, we have studiously complied with nearly all requests. Two thousand copies of the loose-leaf edition have been printed, with the intention of making corrections and additions from time to time, so that the book may be kept up to date. Special mention should be made of the services rendered by E. T. Thurston, L. E. Crawford, H. J. Thomas and S. A. D. Schenck in the preparation and arrangement of the contents. Further mention should be made of the members of the Exchange who purchased advertising space. In order to cover the cost of publication, these men paid for the space more than it was really worth. Many, many thanks, gentlemen, for your hearty co-operation. The Manager hopes that the returns from this investment will greatly repay you for your generosity.

A Sermon on Blue Prints

Firstly, do not leave blue prints lying around in the booths or in the racks after you have finished with them.

Secondly, somebody paid for these prints and would like to have them returned. You know how you feel when someone uses your monkey wrench and does not return it. Thoughtful attention to [fol. 185] other people's property breeds confidence and respect.

Thirdly, Take away the prints you have left around so as to make room for current plans that are being used daily.

In conclusion, a little thoughtfulness, a little co-operation, a little more unselfishness will grease the machinery of human relations and make for smoothness of operation and durability.

Let us pray.

New Member

James Piconi, Contracting Plasterer, 391 Filbert Street, was elected to membership at the last meeting of the Board of Directors.

"Early to bed and early to rise,
Work like hell and economize"

—President Winston of the A. G. C.

Builders' Exchange

Important Laws Covering Construction Work in California

At the last session of the Legislature the following four laws governing construction work were enacted and their enforcement placed under the jurisdiction of the Industrial Accident Commission:

The use of Dangerous Equipment and False work is a Misdemeanor.

Section 402 (c) of the Penal Code as amended, provides that any person employing another in the construction, alteration, repairing, painting or cleaning of any building or other structure, who furnishes unsafe equipment or scaffolding, or obstructs any officer in [fol. 186] specting such equipment, or removes any notice of the Industrial Accident Commission posted thereon, shall be guilty of a misdemeanor.

Elevators Used in Buildings During the Course of Construction, Must be Made Safe.

Chapter 332 provides that every hoist used in buildings during the course of construction shall use a system of signals as specified by safety orders to be made by the Industrial Accident Commission, and such hoists shall be constructed so as not to endanger the lives of workmen.

All suspended scaffolds ten (10) feet above the ground must have safety rails.

Chapter 333 provides that all suspended scaffolds more than ten (10) feet above the ground shall have a rigid railing forty-two (42)

inches above the platform and shall be of sufficient strength to support workmen, tools, appliances and materials thereon.

Temporary Floors and Safety Nets to protect Workmen from falling and from falling Materials.

Section 1 of Chapter 334 provides that any building more than two stories high shall have the joists, beams and girders of floors below the floor where any work is being done, planked or covered as follows:

(a) Reinforced concrete buildings shall have each floor filled in either with forms or concrete before commencing work on the walls of the next story. Any building having wooden floors, other than a steel frame building, shall have the underflooring, if double flooring to be used, laid on each floor before commencing work on the next story above. Where single wooden floors are to be used, each floor [fol. 187] shall be planked over before commencing work on the next story above.

(b) In steel frame buildings every other floor shall be covered with two (2) inch planks.

(c) If spans of floors exceed thirteen (13) feet intermediate beams shall be used to support the temporary flooring.

(d) If the distance between planked floors exceeds twenty-five (25) feet intermediate floors or safety nets shall be provided.

(e) The erection gang shall at all times have a planked floor below them not more than two stories distant.

(f) The riveting gang and steel painters shall at all times have planked floors below them not more than two stories distant. Men working below riveting gangs must at all times be protected from falling materials.

Section 2 provides that if the steel columns in a building are spliced at every story the erection gang shall in no case be more than two stories distant from the riveting gang. If the columns are spliced every second or third story the erection gang shall not be more than four stories from the riveting gang.

Section 3 provides that planked floors shall consist of planks tightly laid together, of No. 1 common lumber, not less than two (2) inches thick and eight (8) inches wide, free from protruding nails or other objects. Nets shall consist of at least one and one-half (1½)* inch manila rope with three-quarter (¾)* inch borders and four by four (4 x 4) inch mesh. The borders of the nets shall be provided with loops so that they can be readily combined or attached to convenient points on the structural frame.

[fol. 188] Employment Department for Week Ending April 22

Six men were registered by the Department as being unemployed and willing to work under the American Plan.

*Circumference and diameter.

One hundred and twenty-two men were sent out to jobs. Divided into various crafts, they are as follows: Bricklayers 2; carpenters, form and frame, 17; carpenters, finish, 18; carpenters' apprentices 1; cement finishers 6; hod-carriers 5; housesmiths 4; laborers 39; lathers 8; painters 1; plasterers 13; plumbers 1; sheet metal workers 2; stair builders 1; steam fitters 2; file setters (cork) 1. Total 122.

Analysis of Building Permits

An elaborate analysis of the building permits issued by United States cities in 1920 has just been completed by the Bureau of Labor Statistics. The report shows how the sum of \$1,204,000,000 expended in 196 cities was distributed among thirteen classes of building.

Thirty-seven per cent of this sum was expended for residential buildings, mostly houses, but including apartments, clubs, hotels and boarding houses. We spent twice as much for garages as for schools and more than twice as much for amusement places as for churches.

An expenditure of \$1,214,000,000 in 207 cities was distributed among five different kinds of construction. A little more than one-quarter was spent for wooden buildings and almost three-quarters on buildings which have some fire-resisting qualities. Brick and hollow-tile buildings are much the largest group consuming 43 per cent of the total expenditure. Wooden buildings come in second place and steel skeleton buildings next, with concrete a good fourth, [fol. 189] costing altogether about one-half as much as the wooden buildings.

Membership Applications

George P. Schwaab, western representative of the Sandusky Cement Co., of Cleveland, Ohio.

Henry Dulik, New San Francisco Wire and Iron Works, 534 Gough Street, San Francisco.

News Item

Mr. Gompertz was elected chairman of the City Beautiful Committee. James Rolph, Jr., Tom Dillon and Louis F. Armknecht are the other members of the committee.

Builders' Exchange

Notes and Comment by E. T. T.

A recent survey of the employment situation in the building trades east of the Mississippi by the Building Trades Employers' Association of New York City indicates that plasterers are in greatest demand and concrete laborers in least demand. The trades arranged in order of scarcity of journeymen serve as an index to the demand

for apprentices, as follows: Plasterers, terrazzo workers, encaustic tile layers, elevator constructors, marble cutters, and setters, metallic lathers, bricklayers, painters, steamfitters, mosaic workers, plumbers, carpenters, plasterers' helpers, sheet metal workers, cement finishers, structural iron workers, hoisting engineers, electrical workers and cement and concrete laborers.

The American Plan is spreading rapidly in Buffalo. The latest [fol. 190] convert is the Master Plumbers' Association, following failure to reach a compromise agreement on wages with the journeyman on strike since March 1st. One hundred and thirty-three employers are affected and 300 men are on strike. War-time wages were \$1.00 per hour; present wages, 90 cents.

The Builders' Association of Kansas City, following a strike in the face of arbitration, has declared all agreements with the Building Trades Council cancelled, thus making a first step toward industrial freedom.

An American Plan magazine is in immediate prospect through the initiative of the Associated Building Employers of Detroit, an organization comprising some 525 concerns employing about 7,000 men.

The statute (Chapter 183, Laws of 1919) requiring employers to pay \$350.00 into the State Treasury whenever an injured employee died without dependents, said sum to be disbursed by the Industrial Accident Commission for rehabilitation and re-education of disabled employees, has been declared unconstitutional by the State Supreme Court and a rehearing denied.

The Anti-injunction law of Arizona (Revised Statutes of 1913), which follows the wording of the Clayton Act, regulating injunctions by Federal Courts, was declared unconstitutional by the Supreme Court of the United States last December on the ground that to give operation to a statute whereby serious losses inflicted by unlawful, although not violent, means are in effect made remedyless, is to disregard fundamental rights of liberty and property and to [fol. 191] deprive the injured party of due process of law.

The census bureau reports volume of building during February for the entire country was on a par with 1913, while costs were 62 per cent higher for all buildings, and 52 per cent for concrete factory buildings.

Index numbers for February, showing relation to 1913 prices are given as follows: Crops, farm price, 112; Livestock, farm price, 109; crops, wholesale price, 126; food, wholesale price, 138; food, retail price, 142; clothing, wholesale price, 183; fuel and lighting, 183; metal and metal products, 115; building materials, 202; house furnishing goods, 213; all commodities, 151.

The trend from the preceding month was downward in metals and housefurnishings, level in clothing, fuel and lighting and building materials, and upward in all other commodities.

Business failures decreased 14 per cent for the month.

Apprentices are available from time to time through the Employment Bureau of the Exchange, 185 Stevenson Street. Members

should notify the Bureau of they are or expect to be in position to take on apprentices in any trade. In the training of apprentices lies the hope for the future supply of skilled labor.

Six weeks' tie-up in Cleveland ended April 13th, and from twenty-five to thirty-five thousand men returned to work. The union leaders having expressed a willingness to do away with all harmful and costly restrictions in rule and practice, the B. T. E. A. authorized resumption of work at the 1921 wage scale, directed the arbitration committees of the various crafts to endeavor to arrive at satisfactory [fol. 192] agreements by April 30th; pledged itself to endeavor to set up permanent, constructive machinery for the prevention of strikes and lockouts and voted to cause the appointment of a citizens' committee to study the terms and conditions of employment in the building industry and published conclusions and recommendations at earliest possible date.

The eight points essential to industrial peace and prosperity, as laid down by Roger Babson, statistician and business advisor, are as follows:

1. Abolition of the closed shop movement on the part of unions.
2. Encouragement by the unions of individual efficiency instead of putting a premium on sloth and inefficiency;
3. Promotion by unions of harmony and co-operation between employer and employe, instead of the present strife and discord;
4. The teaching of respect for law and order; legislation for the whole people instead of for a class;
5. Securing better conditions for labor by insisting upon full-time production;
6. Teaching trades to the young instead of limiting apprenticeship;
7. Keeping contracts;
8. Making trade unions thoroughly American.

American Plan for lathers has been established in Syracuse, N. Y., with wages at 90 cents per hour and \$4.00 per thousand. [fol. 193] Three hundred plasterers are wanted in Chicago, and employers have invaded the Cleveland district for them.

The Citizens' Committee of Chicago, formed to enforce The Landis wage award, secured a fund of three million dollars by assessment of the great industries of the city. Contractors were either brought into line by argument or found their credit at the banks shut off. The committee took out sixteen million dollars of insurance on buildings under construction, engaged thousands of guards to protect buildings and workers, and imported mechanics to take the place of strikers. The unions that accepted the award were recognized, but the trades of the ten unions refusing to accept, including carpenters, plumbers, lathers, painters, composition roofers, hoist-

ing engineers, sheet metal workers, cement finishers and laborers, were placed on an American Plan basis.

4. Builders' Exchange.

Builders' Exchange, San Francisco, Cal.

Board of Directors

President W. H. George, First Vice-President D. J. Sullivan, Second Vice-President Jos. B. Keenan, Third Vice-President Geo. T. Bowen, Secretary R. J. H. Forbes, Treasurer Alex Mennie; Directors: Charles W. Gompertz, C. G. Berg, J. A. Hart, J. D. McGilvray, Thos. Campbell.

Board of Directors' Committee

On Finance.—Joseph B. Keenan, Chairman; D. J. Sullivan, R. J. H. Forbes.

[fol. 194] On Rooms.—George T. Bowen, Chairman; C. G. Berg, Thomas Campbell.

On Publicity.—J. A. Hart, Chairman; Frank C. Herrick, Clarence Pratt.

On Entertainment.—Jos. B. Keenan, Chairman; D. B. Farquharson, C. Holloway, Jr.

On Grievances.—James H. Pinkerton, Chairman; Joseph B. Keenan, Thomas Campbell, Geo. R. Perkins, R. B. Cleghorn.

On Membership.—Alex Mennie, D. J. Sullivan, C. G. Berg.

Auxiliary Committee on Membership.—L. J. Neal, E. S. Rainey, Charles M. Cadman.

Central Council Committee

On Intercraft Relations.—D. B. Farquharson, Chairman; A. Heyman, D. J. Sullivan, Geo. Wagner, Thomas Campbell.

On Rules and By-Laws.—Charles W. Gompertz, Chairman; C. E. Reinhart, D. J. Sullivan, R. J. H. Forbes, Jas. H. Pinkerton.

On Safety.—J. A. Hart, Chairman; R. G. Guyett, Thos. J. Bennett, Geo. T. Bowen, J. D. McGilvray.

On Public Affairs.—Chas. W. Gompertz, Chairman; R. J. H. Forbes, Geo. R. Chambers, Frank Mordecia, J. D. McGilvray.

On Legislation.—D. J. Sullivan, Chairman; Alex. Mennie, J. A. Hart, D. B. Farquharson, Wm. Chatham.

On Industrial Relations.—W. H. George, Chairman; D. B. Farquharson, Geo. T. Bowen, Geo. Wagner, A. Heyman.

Sergeant at Arms.—Walter Jamison.

Notes and Comments Continued

Individual agreements in writing to comply with American Plan principles are required of every applicant for work in the ten trades

that were placed on an open shop basis following the refusal of the [fol. 195] unions to accept the Landis award in Chicago.

Sheet Metal Worker Apprentices are provided for as follows in Newburgh, N. Y.; Term, four years, based on agreement signed by the boy, his parents or guardian, and by the employer, providing for efficient service and earnest endeavor on the part of the apprentice, and authorizing the employer to require attendance at night school up to three nights per week. Wages are on a sliding scale, the initial rate depending on school grade attained, and increase four cents per hour every six months. The system has been successfully operated for several years.

Simplification of construction was the subject of a conference of architects, engineers and contractors under the auspices of the Department of Commerce on February 13. It was recommended that immediate attention be concentrated on dimensional simplification in the following: Millwork, plumbing, heating, interior wall construction, hardware, lighting fixtures and clay products.

A set-back line ordinance, prepared by the City Planning Commission, is now under consideration by the Board of Supervisors. It applies to residential districts and gives the Commission advisory powers in the matter of determining whether and how far future structures shall be set back from the street line.

A trade school for contractors, superintendents, foremen and employes was recently organized on the initiative of the Associated Building Employers of Detroit and is being conducted two evenings [fol. 196] each week by the Michigan Society of Architects. The course consists of twenty lessons to show the correlation of the different trades and teach reading of blue prints. One hundred and twenty men registered for the course, commencing January 3rd, and attendance for the first six weeks averaged better than 95 per cent.

To pay one day's wages of a mechanic requires the entire income from an acre of oats, on which the farmer has expended his own time and money, tools and equipment and run the risk of crop failure withal.

The average farm consists of about 160 acres, including 20 acres non-tillable land. At current rates the average mechanic liable for neither capital, tools nor taxes, can get the entire product of such a farm for about 175 days' work per year.

In other words, a mechanic, with no investment and no risk and working only half the year can make the entire gross annual income of the average farmer operating a two-man farm, leaving nothing for fertilizer, upkeep, taxes and interest. These and other interesting and pertinent facts are noted in an article by E. Davenport in the Saturday Evening Post for April 8th.

Apprentice trade classes as an adjunct to the public school system of Detroit are in prospect. The Association Building Employers is urging that provision for such classes be incorporated in the school budget.

When the workmen own the workshops;
 And the railroad men the rails;
 And the grocery clerks the groceries
 And the mail clerks own the mails;
 When the preachers own the pulpits;
 And the pressmen own the shops;
 And the drillers own the oil wells;
 And the jails are owned by cops;
 When conductors own the street cars;
 And each driver owns his buss;
 Will you tell us common people
 What in heck becomes of us?

—Exchange.

Advertising

Tell the world
 About your wares
 And keep telling them
 Otherwise they will buy
 From the fellow who is
 Always at it.

"The President's Corner.—April 29, 1922. The Industrial Relations Committee at its meeting on Thursday evening, April 27th, passed unanimously a resolution authorized by the resolution of the Central Council dated April 13, 1922, to the effect that all members of the San Francisco Builders' Exchange operating outside of the City and County of San Francisco must comply with the American Plan and the Builders' Exchange wage scale the same as they do in San Francisco.

Members will please take notice.

The bricklaying situation is well in hand. Many of our members are proceeding with their work under the American Plan and it is hoped in the near future the entire craft will be at work.

The plastering situation is proceeding favorably. A number of American Plan jobs are running, and the indications are that the [fol. 198] Master Plasterers will shortly accept the situation, and like all other loyal members of the Builders' Exchange, operate on the American plan.

The plumbing situation as far as the members of our Exchange is concerned, is gaining strength every day. Many plumbers are arriving, and it is expected that the plumbing business will be running on a normal basis, American Plan, within the next few days. Builders' Exchange of San Francisco, W. H. George, President and Chairman Industrial Relations Committee."

PEOPLE'S EXHIBIT No. 15

are forms turned in by Inspectors after canvassing the various jobs to see that they are operating the American Plan, and are filed with the witness in his office. They are as follows:

No. 1.—“Daily report of shop and of jobs operating. (Report each craft, and common laborers, separately.) Contractor: Monohan & Slaven; Craft, plumbers; Location of shop-job, 745 Ellis Street; Signs put up (yes or no) blank; Foreman's name, blank; Remarks, blank; Craft, plumbers; No. union men, blank; wages, blank; number non-union men, 2; Wages \$9; Union or non-union job, blank; date May 12. (Signed) A. Hutchinson.”

No. 2.—“Daily report of shop and of jobs operating. (Report each draft and common laborers separately.) Contractor: Monohan & Slaven; location of shop-job, 745 Ellis Street; signs put up (yes or no) blank; Foreman's name, blank; Remarks, blank; craft, plumber-apprentice; Number union men, blank; Wages, blank; Number non-union men, 1; Wages \$6.00; Union or non-union job, blank. Date May 12 (Signed) A. Hutchinson.”

[fol. 199] “No. 3.—Daily report of shop and of jobs operating. (Report each craft and common laborers separately.) Contractor: Monohan & Slavin; location of job W/S 25th”—(Avenue I presume) near Balboa. Signs put up (Yes or no) blank; Foreman's name, blank; remarks, blank; craft, plumbers; number union men, blank; wages, blank; number non-union men, 1; wages, \$9.00; union or non-union job, blank. Date 6-19-22, signed E. V. Lee.”

There were signed and delivered to the witness as Secretary of the Industrial Relations Committee of the Builders' Exchange, approximately 12,000 pledge cards, of which Exhibit No. 13 is the form,—since April 13, 1922. Not all building contractors of San Francisco are members of the Builders' Exchange, and witness does not recall any specific instance that he did explain to any contractor what was meant by “American Plan in all crafts,” although he presumes that he did explain the American Plan; witness does not remember if any one he asked to sign the pledge card, did desire an explanation of the American Plan. Property owners desiring to build, who were not contractors, applied for permits and signed pledge cards.

PEOPLE'S EXHIBIT No. 16

are presumably Trade Rules of the Builders' Exchange appearing on the letterhead of the Builders' Exchange and witness believes they were sent to all members of the Exchange. Said Exhibit reads as follows:

"The Builders' Exchange (Incorporated July 5, 1890), 180-188
Jessie Street. Phone, Sutter 6700

San Francisco, Cal., 192—.

Trade Rule No. 11

"That hereafter members of the Builders' Exchange desiring to employ labor shall only do so when men come to their jobs or place [fol. 200] of business, or through the employment office of the Builders' Exchange.

"Trade Rule No. 12

"Foremen working for members of the Builders' Exchange now or hereafter, shall be the representatives only of their employers, and cannot be affiliated with any organization whose interests may be opposed to that of their employers.

"Trade Rule No. 13

"Members of the Builders' Exchange shall not allow business agents, walking delegates or any other representative of unions to go upon jobs or in shops during working hours for any purpose whatsoever."

Referring to People's Exhibit No. 15, and the one dated May 12, signed "A. Hutchinson," was an inspector in the employ of the Industrial Relations Committee of the Builders' Exchange. He also signed the one dated May 12. He believed the signer of the report of said Exhibit 15, dated 6-19-22 and 5-19-22, was also an inspector in the employ of the Industrial Relations Committee of the Builders' Exchange. There were three of such inspectors. Each day the inspectors turned in reports of the jobs they inspected and their duties were to canvass each job and see if the American Plan was being maintained.

No instructions were given by Mr. George or any of the defendants in this action, to the witness as to whether or not he should issue a permit to any building contractor in the event that the report of one of the inspectors showed that he was employing a union foreman; witness issued permits to building contractors where the report of the inspector showed that such contractors were employing union foremen.

[fol. 201] Mr. Wm. H. George instructed the witness what to do in the event of any person applying for a permit who refused to sign the pledge; such instruction was not to issue any permit unless the contractor signed the pledge card. Witness states he has issued permits in instances where the building contractor employed only two men, both of whom are members of unions, but witness cannot re-

member in which case, and does not know whether he can produce the record.

PEOPLE'S EXHIBIT No. 17

consisting of five (5) letters on letterheads of the Builders' Exchange, are as follows:

"The Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 12, 1922.

"At a regularly called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, the following resolution was made, seconded and carried: 'At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the city and county of San Francisco for the balance of the year 1922.'

"The Industrial Relations Committee of the Builders' Exchange begs to advise you that in order to carry out fully the terms of the resolution it will immediately be necessary to install the permit system so far as cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products, also sand, rock and gravel are concerned.

Therefore, the permit system will operate for the above materials effective 8 a. m. Thursday, April 13, 1922. Will you kindly be governed accordingly.

If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to all other materials used in the building trades.

Your whole hearted co-operation is necessary, will be appreciated, and will soon end the present controversy.

Yours very truly, Builders' Exchange of San Francisco, by
Committee on Industrial Relations, W. H. George, Chairman."

"The Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 26, 1922.

Referring to our letter of April 12th, ordering in the permit system so far as cement, lime, plaster, ready mixed mortar, common

brick, fire and face brick, terra cotta and all clay products, also sand, rock and gravel are concerned. Please carefully adhere to the following three points:

1. The permit system applies not only to consumers but also to dealers. No department or class of deliveries is excepted. The permit system is to cover all deliveries."

The words "consumers", "dealers" and "all" are underscored.

"2. Permits must (underscored) be on file with all dealers and manufacturers for all materials released.

3. All released materials must be delivered to the places called for by the permit.

[fol. 203] 4. The permit system is hereby extended to take in all deliveries in San Mateo and Santa Clara Counties.

Yours very truly, Builders' Exchange of San Francisco, by
Industrial Relations Committee, W. H. George, Chairman."

"The Builders' Exchange (Incorporated July 5, 1890), 180-188
Jessie Street. Phone, Sutter 6700

San Francisco, Cal., June 7, 1922.

An impression seems to be prevalent in some quarters that certain jobs have blanket permits or that it is permissible to deliver to them because they are supposedly American Plan jobs throughout.

Please be advised that this is not so. Everybody is being treated alike and there are no special privileges. Be sure you have on hand a permit for every delivery or carload shipment.

Yours very truly, Builders' Exchange of San Francisco. W.
H. George, President and Chairman Industrial Relations
Committee."

"The Builders Exchange (Incorporated July 5, 1890), 180-188 Jessie
Street. Phone, Sutter 6700

San Francisco, Cal., June 21, 1922.

Effective at once wall board, buttonlath, Keene cement, and all plater products are added to the list of goods to be permitted in San Francisco, San Mateo and Santa Clara Counties.

Yours very truly, Builders' Exchange of San Francisco. W.
H. George, President and Chairman Industrial Relations
Committee."

[fol. 204] "The Builders' Exchange (Incorporated July 5, 1890),
180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., June 30, 1922.

Effective at once and to further carry out the resolution adopted by the Central Council of the Builders Exchange on April 12, 1922, reading as follows:

'At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922.'

It is now necessary to add to the permit system in addition to cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products, sand, rock and gravel, wall board, button lath, Keene cement and all plaster products for the Counties of San Francisco, San Mateo, and Santa Clara, the following articles:

Wire lath and metal lath of all kinds,

Wood lath.

Kindly be governed accordingly and see that you have a permit on hand for all L. C. L. as well as carload deliveries.

Yours very truly, Builders' Exchange of San Francisco. W.
H. George, President and Chairman Industrial Relations
Committee."

[fol. 205]

Vol. 3

Date: April 25, 1923.

(Continuation Mr. Crawford's Testimony)

The Cowell Lime & Cement Company engaged in the business as Manufacturers and Sales Agents of Portland Cement and Lime, and is a member of the Builders' Exchange, and has been during all the time that witness was in the employ of that Company.

Some of the applicants for permits refused to sign the pledge cards, and in such cases he did not issue them any permits.

As Secretary of the Industrial Relations Committee of the Builders' Exchange he attended nearly all of the meetings of that Committee; in some cases all of the members were present and in every case almost, there were at least three of the members. Mr. Wm. H. George was present at nearly all of the meetings; one or two he did not attend. At such meetings the witness does not recall what was said, if anything regarding the American Plan, and witness does not recall any discussion of the permit system at such meetings.

Witness does not recall any discussion by Mr. George with him concerning the daily report in evidence dated May 12, the contractor being Monohan and Slavin, the location of job, 25th Street near

Balboa, the number of union men none, the number of non-union men 1; Wages \$9.00.

Inspectors were sent out for the purpose of ascertaining and checking up on how many union and how many non-union men were employed on each job; Mr. Wm. H. George instructed witness to refuse a permit to contractors who were not operating under the American Plan.

PEOPLE'S EXHIBIT No. 18

is as follows:

[fol. 206] "Industrial Association of San Francisco, Santa Fe Building

Address all communications to the association.

July 1, 1922.

The Builders' Exchange, 180-188 Jessie Street, San Francisco, Cal.

(Attention of Mr. Crawford)

GENTLEMEN: We hand you, herewith, list of jobs operating, in accordance with Mr. George's letter to you of June 29, copy of which was forwarded to Mr. Gross.

Contractor	Sugarman Jobs	Location
McCay.....	1190 Stanyan St.	
— — — — —	N. E. cor. 3rd Ave. and Irving.	
Higginson.....	21st Av. 150 ft. north of Clement.	
— — — — —	N. E. Cor. of 3rd Ave. & Irving	
Steinauer.....	N. side of Cal. 50 ft. W. of 10th Ave.	
M. T. Johnson.....	W. side of 14th Ave. bet. B & C.	
Schwartz.....	N. side of Cal. bet. Gough & Octavia.	
Schwartz.....	McLaren Ave. bet. 29th & 30th.	
— — — — —	232 30th Ave.	
A. W. Lawson.....	N. W. cor. of 2nd and Geary.	
Sherer.....	Moss bet. Howard & Folsom.	
— — — — —	232 30th Ave.	
A. W. Lawson.....	N. W. cor. of 2nd & Geary.	
Sherer.....	Moss bet. Howard and Folsom.	
— — — — —	S. side of Clement St. near 27th.	
E. Nelson.....	S. side of Valencia bet. Army & Duncan.	
— — — — —	N. W. cor. of 1st Ave. & Balboa.	

Also the following job, which Mullins is doing for Jannesen: Franklin & Union Streets.

"For Sound Industrial Relations"

We have the record of Hammerton's job, as below, Gus May, plumbing contractor:

East side of Funston Ave., 200 ft. N. of Fulton.

We have the record of the following Hammill jobs; F. Kohler is the plumbing contractor in each instance:

[fol. 207] W. side of 16th, 225 ft. N. of Balboa.

S. side of Geary, west of 21st Ave.

N. side of Francisco, 87½ E. of Gough.

We also hand you list of the following jobs on which Kohler is operating. These have previously been supplied you, but in most instances without precise location:

Contractor	Location
Munson.....	E. side of Mission, 225 s. of 25th.
Warden.....	S. side of Carmel, 208 E. of Cole.
Warden.....	N. side of Alma, 176 e. of Stanyan.
Midbust.....	N. side of 15th 264 n. of Balboa.
Warden.....	E. side of 29th, 75 to 125 n. of Balboa
Sandberg.....	Corner 11th & Lake.
Warden.....	5660 Mission St.
Warden.....	N. side of Chestnut, 109 w. of Van Ness.
Warden.....	W. side of 15th Ave. 105 s. of Judah.
Warden.....	W. side of 21st, 170 s. of California.
Sandberg.....	W. side of 12th Ave. 75 ft. N. of Fulton.

Also the following jobs on which Gus May is the plumber, most of which have previously been given to you without the precise location:

Contractor	Location
Adler.....	19th Ave. 175 s. of Balboa.
Moren.....	W. side of 12th Ave. bet. I & L.
Adler.....	S. side of Anza 120 ft. E. of 22nd.
— — — — —	Railroad and Palou Ave.
McLean.....	W. side of 17th, 275 S. of C.
Gillogley.....	E. side of Prosper, 91 N. of 17th.

Gus May Jobs (Continued)

Contractor	Location
Irvine.....	W. side of 9th Ave. 200 N. of Fulton.
Cohn.....	W. side of Franklin, 30 S. of Green.
Jones.....	S. W. corner 27th and California.
Ellingson.....	S. E. cor. California & 32nd.
Johnson.....	N. E. cor. 11th and Judah.

Very truly yours, Industrial Association of San Francisco.
Paul Eliel.

[fol. 208] The Builders' Exchange, Incorporated July 5th, 1890,
180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., June 29, 1922.

L. E. Crawford, Esq., Builders' Exchange, 180 Jessie Street San
Francisco, Calif.

DEAR SIR: Please discontinue issuing any permits to E. A. Johnson until he disposes of Mullin, the plumber.

Please discontinue issuing any permits to Thos. Hamill until he disposes of plumbers Kohler and May.

Please discontinue issuing permits to Nelson Bros., Westwood Park, until they dispose of plumber Madden.

Issue no permits to A. C. Hammerton until he disposes of Gus May.

As heretofore instructed hold up all permits on jobs where Sugarman is the plumber.

Mr. Goss will file with you at once an amended list of any new jobs not started on which the contractors and owners have let the plumbing to any of the bad plumbers. Issue no permits to ever start these jobs. He will keep this list amended from day to day as new jobs are let.

As heretofore hold up all special jobs when requested to by Mr. Goss, letting me know at once what the jobs are. As a starter.

Peterson, Geary & Shannon, Beck Apartments, Power near Bush Galligo School to be handled as previously instructed.

Please call to my attention any other jobs that should be added [fol. 209] to this list which you take from your present records.

Yours very truly, Builders' Exchange of San Francisco.

(Signed) W. H. George, President and Chairman Industrial Relations Committee. WHB-b. CC. Mr. Moss.

Industrial Association of San Francisco, Santa Fe Building

Address all communications to the Association.

June 17th, 1922.

Builders' Exchange, 180 Jessie Street, San Francisco, Cal.

Attention Mr. Crawford

GENTLEMEN: Below please find additional list of plumbing jobs, with contractors and locations:

Albert I. Molliis:

East side of 12th Ave., South of Geary.

West side of Edinburgh, 300 ft. east Excelsior.

Alteration job—108 Congo St. Sunnyside.

N. E. Cor. Church St. near 28th—Alteration job.

1009 Divisadero St.

North side Taraval—200 West 34th St.

108 Congo St.

E. Sugarman:

North side California St. bet. Gough & Octavia.

McLaren Ave., bet. 29th & 30th Ave. Seacliff.

N. E. Cor. 3rd Ave. & Irving St.

24 Leavren Ave.

232 30th Ave.

2nd Ave. & Geary.

1190 Stanyan St.

[fol. 210] 3rd Ave. bet. Lincoln & Irving.

N. E. cor. 3rd Ave. & Irving.

21st Ave. bet. Clement & Cal.

Santa Paula Ave. St. Francis Wood.

S. S. Clement St. near 27th Ave.

California & 10th Ave.

14th Ave. bet. B & C.

Moss St. bet. Howard & Folsom.

Valencia St. bet. Army & 29th Sts.

1st Ave. & Balboa St.

Very truly yours, Industrial Association of San Francisco.

(Signed) Paul Eliel. PE. T.

"For Sound Industrial Relations"

Industrial Association of San Francisco, Santa Fe Building

Address all communications to the Association.

June 16, 1922.

The Builders' Exchange, 180 Jessie St., San Francisco, Calif.

(Attention of Mr. Crawford)

GENTLEMEN: We have the following list of plumbing jobs for which Mark Lally holds the orders. The Master Plumbers, in all instances, are on the list. You may find one or two duplications below, as compared with the list which we have already given you. The list follows:

[fol. 211]

Kohler's Jobs

Location	Owner	Condition of job
17th & B.	Simme	Ready to Plaster.
W. 12 & N Fulton..	Sonberg	Ready to Plaster.
16th & B.	Hammill	Ready to Plaster.
16th & A.	Sonberg	Ready to Plaster.
15th & B.	Midbust	Ready to pour foundation
W. 21st & Cal.	Warden	Ready to Plaster.
2nd & Geary.	Midbust	Ready to pour foundation.
29th & B.	Warden	1 house—Ready to plaster. 1 house—foundation only in. 1 house—ready to pour foundation.
27th & Lake.	Hammill	Not started.
12th & Lake.	Sonberg	Not started.
37th & Geary.	Warden	Not started.

The following jobs of Kohler have not yet been inspected. We will inform you of their condition within a day or two.

Location	Owner
W. 21 & Geary	Hammill.
W. 15 & Judah	Warden.
25th & Mission	Munson.
N. S. F. & E. of Gough.....	Unknown.
N. Chestnut & W. Van Ness.....	Warden.

"For sound Industrial Relations"

Kohler's Jobs (Contd.)

Location	Owner
Camel & Stanyan	Warden.
Alma & Stanyan	Warden.
5060 Mission St.	Warden.
Parkside	Warden.

[fol. 212]

Gus May's Jobs

Location	Owner
W./s. 9 Av. 200' N. of Fulton.....	Irvine, Contr.
13th Ave. & Fulton	Unknown.
W/s. Franklin Street, South of Green....	L. J. Cohn, Contr.
Cor. 28th & Cal. T. M. Jones, Contr.....	Unknown.
Location unknown	Homenga.
Location unknown	W. J. Irvine.
12th & I	Unknown.
Quesado & Newhall	Unknown.
17th & Fulton	Unknown.

Location

Owner

23rd & C	Homenga.
Ross Valley	Unknown.
15th & Anza (near French)	Unknown.
Railroad & Palou	Unknown.
5th & Anza	Konig.
Upper Terrace	Unknown.
19th & C	Adler.
E. of 19th & N./s. Fulton, Moller. Contr.	Unknown.
Carl & Frederick	Unknown.
Church & Helvig	Unknown.
Liberty #242 Ellison Contr.	Unknown.
11th Ave. & Judah	Unknown.
Parkside	Mailliard.
N. of 17th & E./s. Prosper, Gillogley, Contr.	Unknown.
E/s. 32nd & S. of Cal.	Hammill.
22nd & A	Adler.

S. W. Bend Jobs.

N. E. cor. Fulsom & Dora.	Unknown.
Washington Street E. of Van Ness.	Unknown.
Haight & Pierce	Anderson.

[fol. 213]

Peterson Company

Location

Owner

Geary & Shannon	Little.
East side of Powell N. of Sacramento.	Anderson.

Turner Company

Pipes and fittings for sprinkling jobs as follows:
 Peck & Hillis, Oakland, Watson & Moore job.
 Oakland, Albers Bros. Milling.

Very truly yours, Industrial Association of California.
 (Signed) Paul Eliel. Paul Eliel. PE/IA.

Industrial Association of San Francisco, Santa Fe Building

Address all communications to the Association.

June 9th, 1922.

The Builders' Exchange, 180 Jessie Street, San Francisco, Calif.

Attention Mr. Crawford

GENTLEMEN: We hand you herewith list of jobs upon which
 union plumbers or steamfitters are now working. This list is not

to be considered as a compilation of any previous list sent to you, but is as complete as we can make it at this time.

In some instances, it may be found that the job is not yet started, and wherever we have this information, as a result of our inspection, you will find it below in the appropriate column.
[fol. 214]

Plumbing contractor	Owner or gen'l contractor	Location, remarks
Anderson & Rowe	Nelson	2nd Ave. & Calif.
"	Phelan	24th Ave. & Lake.
"	Nelson	3rd Ave. & Calif.
Turner Company		Filbert & Hyde.
Anderson & Rowe	Phelan	17th Ave. & Calif.
"	Strand	2nd Ave. & Fulton.
"	"	16th near Clement.
"	Nelson	13th Ave. bet. Cal.
"	Olson	Calif. bet. 17th & 18th Ave.
"	Wade	18th Ave. bet. B & C.
"	Kincannon & Parego	Clay St. near Polk.
"	McDonough	North Ave. nr. Fulton.
"	Prof	Hyde at Pine.
"	Erickson	Chenney & McGill.
Peterson	Beck	E. S. Powell No. of Bush.
Higgins		11th Ave. & Geary.
"	Higgins	Geary & Hyde (not started).
"	Monson	20th Ave. N. of Fulton.
"	J. H. Johnson	Leavenworth & Calif.
"	"	Grove & Ashbury (not started).
"	"	41st Ave. bet. B & C.
"	"	22nd & Clement.
"	"	11th Ave. & C.
"	"	20th Ave. & Fulton (not st.).
Mullins	Jannsen	Franklin & Union.
"	Morrell Estate	Mission bet. Brazill & Excelsior.
"	Horgan	Randall St. E of Mission.
"	Reatz	23rd Ave. nr. Balboa.
Littisch		Adams School.
Littisch		Columbus School.
"		Park Side "
Peterson	Meussdorffer	Gough & Wash.
"		No. Beach High School.
Madden	Madden	Westwood.
"	Judson	St. Francis Wood.
"	Quiddens	St. Francis Wood.
"		Flood Ave.
"	Roesler	Fairmont Court.

Plumbing contractor	Owner or gen'l contractor	Location, remarks
Madden	Ruth	St. Francis Wood.
"	Dial	" " "
Peterson	Stevens	Fulton bet. 15th & 16th.
"	Stoof	S. S. Bush E Leavenworth.
" .....	.....	Sacramento & Jones.
Looney	Nelson	Oak & Buchanan (not st.).
Flood	Hess .....	.....
Band .....	.....	S. S. Haight W. of Pierce.
"	Veyle & Collins	S. S. Union, E. of Van Ness.
" .....	.....	S. S. Pine W. of Powell.
" .....	.....	S. S. of Haight, W. of Pierce.
" .....	.....	S. S. of Wash. E. of Van Ness.

[fol. 215] Very truly yours, Industrial Association of San Francisco. (Signed) Paul Eliel. Paul Eliel. PE-T.

Thos. Smith	W. Guerror S. S. 18th...	P. F. Merchant.
Thos. Smith	W. London N. Persia...	E. S. Cargrove.
E. Sugarman	St. Francis Wood Portola Drive	Garden Home Co.
"	151 Harold Ave.....	Mrs. Lee.
"	W. Moss S. Howard.....	J. Wolfred.
"	W. 14th Ave. N. Cal. St..	S. Salamon.
G. May	W. Franklin S. Green...	Saunders.
"	N. S. Fulton E. 19th Ave.	Augman.
E. Sugarman	S. Geary E. Leavenworth.	E. Collins.
E. Sugarman	Cor. Geary & Leavenworth	St. Epp.
A. Miller	306 Sherman St.	A. Miller.
T. Smith	3015 Mission St.	St. S. T. Yul.
"	N. S. O'Farrell W. Jones.	C. Peterson.
Gus May	22nd Ave. S. Cal. St....	Hemminga.
"	22nd Ave. N. Fulton....	"
T. Smith	Fleishman Yeast Co.....	23rd & Minnesota.
Tom R. Smith	S. W. Band Army & Florida	St. Munberger.
Higgins	Alliston Way & Merritt Terrace	J. Front.
"	Atalayer Terrace nr. Fulton	Anderson.
"	S. Alliston Way Merritt Terrace	Holden.
E. Sugarman	S. S. Anza W. 19th Ave..	Morton.
"	W. S. Cal. E. 26th Ave..	Fontanella.

Plumbing contractor	Owner or gen'l contractor	Location, remarks
E. Sugarman	N. S. Cal. S. E. 21st Ave.	Fontanella.
" "	No. Cal. E. Octavia	G. Mensor.
" "	N. W. Cor. Cal. & 1st Ave.	Mrs. B. May.
[fol. 216] Gus May	W. 22nd Ave. S. Cabrillo	Hemminga.
" "	W. Divisadero S. Ellis	Verlager.
Tom Smith	N. E. Dore & Folsom	C. Peterson.
Higgins	W. 11th Ave. S. Geary St.	J. Kirby.
"	E. S. 11th Ave. N. Ca-	Peterson.
Sugarman	W. 14th Ave. N. C St.	Salomon.
G. May	W. 4rd Ave. S. Cabrillo	Wm. Farrell.
Higgins	S. W. cor. 24th Ave. & Cal.	Claussen.
T. Smith	S. Union & E. Van Ness Ave.	Veghle & Collins.
" "	S. Washington E. Van Ness	T. West.
Gus May	N. W. Cor. Waller & Divisadero	Symon Bros.
C. Peterson	Community Apts. Was & Gough	Fred Tillman.
" "	S. S. Union E. of Leavenworth	Mrs. Surmar, 1650 Larkin.
" "	E. S. Powell St. N. of Bush	Mr. Beck, 1st Natl. Bank.
" "	Sutter 180' W. of Powell	Rosseau, French Bank Bldg.
" "	Geary & Shannon Sts.	Wm. Helbing.
" "	S. S. O'Farrell E. of Hyde	Geo. W. Boss, 1120 Market St.
" "	23rd & Howard	O. H. Curtas, 177 7th St.
" "	" "	Krus Planning Mill.

Industrial Association of San Francisco, Santa Fe Building

Address all communications to the Association.

April Twenty-seventh, 1922.

Mr. Wm. H. George, 180 Jessie Street, San Francisco, Cal.

DEAR SIR: Below is a list of Peterson's jobs and owners of the buildings:

Community Apts., Washington and Gough.

Owner, Fred Tillman, Harrison & Embarcadero.

[fol. 217] S. S. Union W. of Leavenworth.

Owner, Mrs. Surmar, 1650 Larkin.

E. S. Powell St., N. of Bush.

Owner, Mr. Beck, First Nat'l Bank or in Bldg.

Sutter 180 W. of Powell.

Owner, Rosseau, French Bank Bldg.

Geary & Shannon Sts.

Owner, Wm. Helberg.

S. S. O'Farrell E. of Hyde.

Owner, Geo. W. Boss, 1120 Market Street.

23rd & Howard Street.

Owner, O. H. Curtaz, 177 7th St.

23rd & Howard.

Owner, Kruse Planing Mills.

Very truly yours, Industrial Association of San Francisco.

(Signed) W. De Jung. W. De Jung. WdeJ. T.

Industrial Association of San Francisco, Santa Fe Building

Address all communications to the Association.

June 10, 1922.

Builders' Exchange, 180 Jessie St., San Francisco, Cal.

(Attention of Mr. Crawford)

GENTLEMEN: Pursuant to your request, we are able to supply you with the following additional information relative to the locations of certain of the plumbing jobs:

Kohler's Job

Contractor	Location
Warden	15th Ave. W. 150 S. of Judah.
Hammill	S. side of Geary, W. of 21st Ave.
Hammill	N. side of Francisco, 87 1/2 E. of Gough.
Sonberg	W. side of 12th, 75 N. of Fulton.

[fol. 218]

Warden	W. side of 21st, 170 S. of Calif.
Warden	N. side Chestnut, 109 W. of Van Ness.

Gus May's Jobs

Irvine	West side 9th Ave. 200 N. of Fulton.
T. M. Jones	Cor. of 27th Ave. & Cal. St.
L. J. Cohn	W. side of Franklin, 30 S. of Green.
Gillogley	E. side of Prosper, 91 N. of 17th.
Ellison	242 Liberty St.
Hammill	E. side 32nd Ave., 120 S. of Cal.
Moller	N. side of Fulton, 82 E. of 19th.

Very truly yours, Industrial Association of San Francisco.

(Signed) Paul Eliel. Paul Eliel. PE/IA.

"For Sound Industrial Relations"

"Industrial Association of San Francisco, Santa Fe Building, 180-188
Jessie Street, San Francisco, Cal.

Attention of Mr. Crawford

GENTLEMEN: We hand you, herewith, list of jobs operating, in accordance with Mr. George's letter to you of June 29, copy of which was forwarded to Mr. Goss. Sugarman Jobs: Contractor, McCay; location 1190 Stanyan St. McCay, northeast corner 3rd Ave. and Irving; Higginson, 21st Ave. 150 feet north of Clement; Higginson, northeast corner of 3rd Avenue and Irving. Steinauer, north side of California, 50 feet west of 10th Avenue. M. T. Johnson, west side of 14th Avenue between B & C. Schwartz, north side of California between Gough and Octavia. Schwartz, McLaren Avenue between 29th and 30th. Schwartz, 232 30th Avenue. A. W. Lawson, northwest corner of 2nd and Geary. Sherer, Moss between Howard and Folsom. Sherer, south side of Clement Street near 27th [fol. 219] Avenue. E. Nelson, south side of Valencia between Army and Duncan. E. Nelson, northwest corner of 1st Avenue and Balboa.

Also the following job, which Mullins is doing for Jannsen: Franklin and Union Streets.

We have the record of Hammerton's Job, as below—Gus May, Plumbing Contractor—east side of Funston Avenue, 200 feet north of Fulton.

We have the record of the following Hammill jobs: F. Kohler is the plumbing contractor in each instance—West side of 1st th, 225 feet north of Balboa. South side of Geary, west of 21st Avenue. North side of Francisco, 87½ east of Gough.

We also hand you list of the following jobs on which Kohler is operating. These have previously been supplied you, but in most instances without precise location: Contractor, Munson; location, east side of Mission, 225 south of 25th. Warden, south side of Carmel, 208 east of Cole. Warden, north side of Alma, 176 east of Stanyan. Midbust, east side of 15th, 264 north Balboa. Warden, east side of 29th, 75 to 125 north of Balboa. Sandberg, corner 11th and Lake, Warden, 5660 Mission Street. Warden, north side of Chestnut, 109 west of Van Ness. Warden, west side 13th Avenue, 150 south of Judah. Warden, west side 21st St., 170 south of California. Sandberg, west side of 12th Avenue 75 north of Fulton.

Also the following jobs on which Gus May is the plumber, most of which have previously been given to you without the precise location: (Then follow the names of six contractors and the location of jobs, and five contractors with the location of the five jobs.)"

[fol. 220] These letters of the Exchange which were addressed to the witness, Mr. Crawford, were to call his attention as an employee of the Builders' Exchange to those specific jobs on which the plumb-

ing was not being done on the American Plan; the Industrial Association of San Francisco sent information to the Builders' Exchange of the kind set forth in this last exhibit of their own volition and not at the request of the Builders' Exchange.

Mullins is a plumbing contractor; also Gus May; also Kohler.

Witness received the aforesaid letter dated June 29th, signed by W. H. George, as President and Chairman of the Industrial Relations Committee; the E. A. Janssen mentioned in said letter is a general building contractor; permits were discontinued to the said E. A. Janssen until he put his plumbing work on the American Plan basis. Witness issued a permit to Mr. Janssen while Mr. Mullins was still doing his plumbing, as Mr. Mullins adopted the American Plan.

According to the request contained in said letter of June 29th, from Mr. George, witness discontinued issuing permits to Thomas Hammill on the particular jobs where May and Kohler were doing the work not according to American Plan. Whether or not Thomas Hamill subsequently dismissed Kohler and May, witness does not know. Referring to the same letter, permits were not discontinued to the Nelson Bros., Westwood Park, until they disposed of Plumber Madden, because Madden put his work on the American Plan basis, and is now operating in that way. Madden is a plumbing contractor; Nelson Brothers are home builders. Kohler and Madden put their shop on the American Plan; also Mullins and May.

[fol. 221] The A. C. Hammerton mentioned in the aforesaid letter is a building contractor; and Gus May is a Master Plumber.

Witness issued a permit to A. C. Hammerton, operating under the American Plan; pursuant to said letter witness held up permits on jobs where Sugarman was the Plumber, he being a contracting plumber.

Mr. Goss is President of the Master Plumbers' Association; he is also a Master Plumber, and telephoned the witness on several occasions, but did not file a list in writing calling the attention of witness to cases on several occasions where builders had let contracts to plumbing contractors who were not operating on the American Plan. Witness, pursuant to instructions in the aforesaid letter of June 29th, (People's Exhibit No. 18) held up specific jobs when requested to do so by Mr. Goss,

The Peterson referred to in that letter is a Master Plumber doing a job at Geary near Shannon, who at that time was not operating under the American Plan; likewise the Beck Apartments.

The Galligo School is a public school (the Galligo High School) but materials were not refused on that job; the plumbing was being done American Plan, but the steam fitting job was being done Union and there was friction between the two crews. There was no objection that the Foreman Steamfitter was a Union man.

The jobs listed under the name of J. W. Mollis, E. Sugarman, Kohler and Gus May, Peterson, Turner Company, refer to jobs in which the plumbing was not being done according to the American Plan.

In the letter of June 16th, of the Builders' Exchange, the S. W.

Band jobs were included in the list because S. W. Band, master [fol. 222] plumber, was not conforming to the American Plan.

The Petersons are plumbing and steam fitting contractors and they were included in the list because they were not operating on the American Plan; the Turner Company are plumbers, steam fitters and electricians and at the time of the letter they were not operating their plumbing and steam fitting work on the American Plan.

In the letter of June 16th, the Peck & Hills, Oakland, Watson & Moore job, Albers Bros. Milling, means that the jobs were being done in Oakland.

The clause in the letter of June 29th, (People's Exhibit No. 18), which said: "Please call my attention to any other jobs that should be added to this list which you take from your present records", means letters received from the Industrial Association calling the attention of Mr. Crawford to particular jobs, and Mr. Crawford in some instances, but not all, reported particular jobs to Mr. George; sometimes he turned them over to the Industrial Relations Committee.

Referring to the letter of June 9th, in "People's Exhibit No. 18", Anderson and Roe are plumbing contractors; they were not then operating under the American Plan; Turner Company engaged in the plumbing contract business has their name thereon for the same reason; likewise Peterson and Higgins (a plumbing contractor) and witness did not issue him any materials which he controlled, to-wit: Cement, Lime, Plaster, rock, sand and gravel, lath, brick or clay products on that job; likewise the same is true of Mr. Mullins who is not running on the American Plan.

Witness did not refuse any materials over which he had control to the jobs of the Adams School, the Columbus School and the Park-[fol. 223] side School, to Mr. Lettisch or Peterson, Madden, Looney, Flood and Band; this on instructions from the Industrial Relations Committee.

Witness did not know and had not heard of Thomas Smith at the time of the letter of April 27th, 1922 (People's Exhibit No. 18.) Kohler and Gus May mentioned in said letter were not running on the American Plan.

Witness believes that the Industrial Association employs a corps of inspectors, but how many he does not know; the inspectors appointed by the Industrial Relations Committee of the Builders' Exchange, turn in duplicate reports when being furnished to Mr. Crawford, the witness and copy thereof to the Industrial Association of San Francisco, with offices in the Santa Fe Building. Witness does not know whether or not the Industrial Association is paying all of the expenses of the Industrial Relations Committee of the Builders' Exchange, but believes that they are paying some of them.

Cross-examination:

The Builders' Exchange does not engaged in the business of selling building materials or building supplies; the Industrial Association of San Francisco is not engaged in selling materials or building supplies, nor is the Industrial Relations Committee of the Builders' Exchange.

The American Plan had nothing to do in regard to the number of Union or non-union men employed on the job.

[fol. 224] Redirect examination:

Exhibit No. 11, and particularly that part reading: "In carrying out the American Plan the proportion should be nearly 50% each", was a form letter which is no longer in effect.

Many time every day permits are issued on jobs where the proportion is 10—being as high as twenty times as many union as non-union men; it is not a portion of the American Plan that the proportion should be nearer 50%; it is a trade rule; if there is only one foreman and he is a Union man, that conforms to the idea of the American Plan, provided there are non-union men on the job; that the foreman must be a non-union man as set forth in People's Exhibit No. 11, is a Trade Rule of the Builders' Exchange; that whether or not it is still in effect witness does not know. There are more permits issued on jobs where there is a Union foreman than where there is a non-union foreman.

Recross-examination:

Witness never refused a permit for building material to a contractor who was employing a Union foreman, providing his work was being operated on the American Plan; that is, he had a non-union man on the job. In instances where the work was not being conducted on the American Plan, or where the applicant refused to sign the pledge to operate on the American Plan, permits were refused by the witness, but never on account of whether or not the foreman was a union or non-union man; nor on account that there might be more Union than non-union men on the job, every day permits being issued where union men predominated. Where there was a union foreman and the majority of union men on the job permits were issued providing that there was at least one non-union man on the job.

[fol. 225] The above conditions prevailed throughout the year 1922. During the year 1922 the number of non-union skilled mechanics employed in San Francisco was 3,201; the number union mechanics, 6,799; that does not include unskilled labor of which there was probably six to eight thousand helpers' apprentices and common laborers. The figures on skilled mechanics was based on reports from employers on the various crafts; the non-union mechanics are registered at two employment bureaus, the Industrial Association and the Builders' Exchange; registered for employment and sent to jobs, which does not mean that they all registered first at the Bureau, but means that they were shown at work by various employers in the building crafts, or said employers reporting to the Bureau in charge of Mr. Crawford, the number of non-union and union men at work. These reports from the various employers are made approximately at the same time.

PAUL ELIEL, people's witness, testified as follows:

Residence, 29 Mosswood Road, Berkeley, California; a member of the staff of the Industrial Association, whose place of business is the 12th floor of the Santa Fe Building, Second and Market Streets, San Francisco; has been a little over a year and a half in said capacity; as such he is in charge of all research and investigations made by the members of the staff of the Industrial Association and subject to such other duties as may be assigned to him.

Mr. J. B. Brady is President of the organization; Mr. George L. Bell is a member of the staff and is in the Industrial Relations Department; has an office in the Santa Fe Building and takes part in the affairs of the Association.

On May 31, 1922, there was a conference between certain representatives of the Industrial Association and the Plumbers' Supply houses of San Francisco and held in the offices of the Association, at which meeting witness was present as a representative of the Industrial Association.

People's Exhibit No. 19 is a list of Plumber's Supply houses to whom lists were sent, giving names of contracting plumbers in San Francisco not operating under the American Plan. These lists were sent through the mail and representatives of some of the Plumbing Houses mentioned were present at the aforesaid meeting.

PEOPLE'S EXHIBIT NO. 19

reads as follows:

"Geo. H. Tay Company, 599 Mission Street, attention H. Olliphant.

Crane Company, 301 Brannan Street, attention C. W. Weld, manager.

Great Western Supply Company, 549 Howard Street, attention Mr. A. Zutschel.

Richmond Sanitary Manufacturing Company, 441—2nd Street, attention W. Middleton.

P. E. O'Hair & Company, 857 Mission Street, attention D. L. O'Hair.

Haines, Jones & Cadbury Company, 857 Folsom Street, attention Harry C. Marsh.

Republic Supply Company, 760 2nd Street, attention John E. Winzeler.

H. Mueller Manufacturing Company, 635 Mission Street, attention Thos. F. Leary, Manager.

Mark-Lally Company, 235 2nd Street, attention L. L. Durkee.

Dalziel Moller Company, 556 Mission Street, attention Mr. Andrew Dalziel.

Wolverine Brass Works, 210 Natoma St., attention A. L. Lamond.

Holbrook, Merrill & Stetson, 6th, Bluxome and Townsend, attention Mr. Henry Morris. Mr. B. Eastwood, both.

California Steam & Plumbing Supply Company, 671 5th Street, attention Eugene T. Auth.

[fol. 227] Grinnel Company of the Pacific, 453 Mission Street, attention Mr. Reddy.

M. Stulsaft & Company, 647 Mission Street, attention Mr. M. Stulsaft.

R. W. Kinney Company, 586 Howard Street, attention Mr. R. W. Kinney.

General Machinery Company, 39 Stevenson Street.

Charles F. Hause Manufacturing Company, Incorporated, 937 Howard Street.

Mott Company of California, 553 Mission Street.

James B. Clow & Sons, Rialto Building.

Central Specialty Company, attention Mr. Donovan, 830 Powell Street.

American Radiator Company, 2nd and Townsend Streets.

Dunham, Carrigan & Hayden Company, Kansas & Division Streets, attention Captain Langdon.

Baker, Hamilton & Pacific Company, 700 7th Avenue, San Francisco, California, attention F. J. Bruzzone.

Standard Sanitary Manufacturing Company, 149 Bluxome Street.

— I call your attention to the further fact, Mr. Eliel, that there are pencil marks drawn over the name, "Charles F. Hause Manufacturing Company" (exhibiting to witness).

A. As I recall the circumstances of that case, we stopped sending the list to them.

The following firms were represented at the meeting: "George H. Tay Company, 599 Mission Street; Crane Company, 301 Brannan Street; Great Western Supply Company, 549 Howard Street; Richmond Sanitary Manufacturing Co., 441 Second Street; P. E. O'Hair & Co., 857 Mission Street; Haines, Jones & Cadbury Co., 857 Folsom Street; Republic Supply Company, 670 Second Street; H. Mueller Mfg. Co., 635 Mission Street; Mark-Lally Company, 235 Second Street; Dalziel Moeller Co., 556 Mission Street; Wolverine Brass Works, 210 Natoma Street; Holbrook, Merrill & Stetson, Bluxome [fol. 228] & Townsend Streets; Mr. Olliphant attended the meeting as the representative of the George H. Tay Company; Mr. Weld as representative of Crane Company; Mr. Middleton as the representative of the Richmond Sanitary Manufacturing Company; Mr. Neal O'Hair represented the P. D. O'Hair & Company; Mr. Marsh as representative of the Haines, Jones & Cadbury Company, possibly Mr. Blair representing said Company; John R. Winzeler represented the Republic Supply Company; Mr. Thomas F. Leary, represented the H. Mueller Manufacturing Company; Mr. Allison represented the Mark-Lally Company; Mr. Andrew Dalziel represented the Dalziel-Moeller Company; Wolverine Brass Works, representative is not known; Holbrook, Merrill & Stetson, representative is not known.

The meeting of May 31st, 1922, referred to was called to discuss the situation in connection with the strike of the plumbers; that it had been called some four weeks before.

PEOPLE'S EXHIBIT No. 20

a letter dated June 1st, 1922, addressed to Haines, Jones & Cadbury Company, 857 Folsom Street, San Francisco, is a sample of letter sent to each of the firms listed in People's Exhibit No. 19, by the Industrial Association of San Francisco, through Paul Eliel. This letter reads as follows:

"June 1st, 1922.

Haines, Jones & Cadbury, 857 Folsom Street, San Francisco, Cal.

Attention Mr. Harry C. Marsh

GENTLEMEN: In conformity with the conclusions reached at the meeting held yesterday of representatives of the several plumbing supply houses, you will find enclosed a list of Master Plumbers operating at the present time on a union basis.

Very truly yours, Industrial Association of San Francisco.
Paul Eliel."

With this said letter, known as People's Exhibit No. 20, were enclosed a list of Master Plumbers who were at that time operating with a full Union crew. There were thirty of said lists sent out to the persons listed in People's Exhibit No. 19; each list contained the names of Master Plumbers who were operating with full union crews on the date of the list, respectively.

PEOPLE'S EXHIBIT No. 21

dated June 6th, 1922, which was sent to each one of the Jobbers and Plumbing Supply houses belonging to the Industrial Association, relative to one of the matters in the strike, and is as follows:

"June 6, 1922.

H. Mueller Manufacturing Company, 635 Mission Street, San Francisco, California.

Attention Mr. Thomas F. Leary, Manager

GENTLEMEN: In connection with the lists which this Association is now supplying to plumbing supply houses, we desire to effect the following procedure: We will send you complete revised lists at any

time any new names are added to the list or any names are taken off. We would ask you, in order to keep the procedure up to the point of maximum efficiency, that as soon as any new name is placed on the list, you immediately inform us of the orders held by you from that Master Plumber, together with the list of materials on such jobs and the date upon which the orders are filed.

Very truly yours, Industrial Association of San Francisco.
Paul Eliel." (PE—G.)

Before May 31st, 1922, at a meeting of the Plumbing Supply Houses heretofore referred to, the various houses had been receiving [fol. 230] information from different sources as to which plumbers were operating on Union basis. At this meeting it was agreed that instead of having this information coming in from several channels the Industrial Association would act as a Clearing House for that information and that the Association would in the future send out the lists to the several Master Plumbers and to the several Plumbing Supply Houses; the lists were sent out in order that the Plumbing Supply Houses might be advised as to who was operating Union Jobs, some of the houses having decided in their own interests that they wanted to sell people who were operating on the American Plan; the Industrial Association sent out revised lists whenever there was a change, as when new names were added or any names taken off the list. Some of the Supply Houses followed the request set forth in People's Exhibit No. 21 and furnished the Industrial Association with the information requested.

Before May 31st, 1922, it was decided by the Plumbing Supply Houses about selling the plumbers and steamfitters supplies to persons whose names appeared on any of the lists; there were meetings prior to May 31 1922, although the witness was not present personally.

The Plumbing Supply Houses during that period continued to fill any contracts they already held with Plumbers, irrespective of whether the man was operating on a Union or the American Plan basis prior to the time of the strike.

The Good Manufacturing Company was a dealer, a rather small supply house which dealt in some special lines, as Manufacturers' Agent; also picked up material for plumbing supply houses that were jobbers in the general field; this company has been delivering materials to men on the lists, so they were placed on the list along with everybody else.

[fol. 231] Mr. Eliel prepared these lists and sent them out and got his information for the lists from various sources; reports, inspectors' reports to the Master Plumbers, and from other confidential sources. The Inspectors made written reports to the Industrial Association of San Francisco, some of which reports the witness has. Also from Mr. W. P. Goss of the Master Plumbers' Association.

Mr. W. H. George, to the recollection of witness, did not attend any of the meetings between representatives of the Industrial Association of San Francisco and the Plumbers Supply Houses of San Francisco.

At the conferences between Mr. W. H. George, representing the Industrial Relations Committee of the Builders' Exchange, and representatives of the Industrial Association of San Francisco, there was discussed the matter of withholding or refusing to sell building materials; those materials that were under the permit system, such as Lime, Cement, etc.; there was an occasional interchange of inspectors between the Builders' Exchange and the Industrial Association of San Francisco; the inspectors of the Industrial Association did not furnish reports to the Builders' Exchange in the beginning, but did so subsequently; at what time witness does not remember.

The firms and business houses mentioned in People's Exhibit No. 19 are located in San Francisco and were at all times and dates mentioned and set forth in the testimony of the witnesses already testifying.

List No. 30, dated November 8th, 1922, which is the last list sent out to the Plumbing Supply Houses by the Industrial Association, and which list is introduced in the evidence as

PEOPLE'S EXHIBIT No. 25

is as follows:

[fol. 232] "List 30, November 8, 1922. (Destroy all previous lists)

Asron, A.; Adami, C.; Behr, J.; Cronin, J.; Good Mfg. Co.; Henesey, A. E.; Lettisch, A.; Looney, J.; May, Gus; Noonan Bros.; Peterson Co. C.; Randall, L.; Rehn, George; Sugarman, E.; Turner Co.; Weinholz, N. G.; Western Plumbing Supply Co.

Secondary Plumbing Supply Houses

"Central Plumbing Supply Co.; City Plumbing Supply Co.; Coast Plumbing Supply Co.; Dan Dolin; Dolan Wrecking Co.; Rolph Co.; National Plumbing & Wrecking Co.; San Francisco Plumbing Supply Co.; Symon Bros.; J. Weisman; G. Weissbaum & Co.; Pacific Pipe Co.; Rapid Wrecking Co.; Reliance Supply Co.; Standard Supply Co.; Blenders Supply Co.; Dan F. Dolan."

The secondary Supply Houses mentioned in the aforesaid list are not the primary dealers; they were small district dealers, not real jobbers and representatives of Manufacturers, but were the little wholesalers also doing a retail business. The Secondary Supply Houses were placed on the list to prevent plumbers who were operating on the Union basis from obtaining supplies through these various secondary houses.

Lists similar to No. 30 (People's Exhibit No. 25) were sent to Crane Company for this purpose:

"In case one of the secondary supply houses called up or appeared at Crane Company with the request for an order, Crane Company would merely ask them where they intended to distribute these goods, if it was for stock or if it was for some particular customer.

If the secondary or smaller supply houses could satisfy Crane that it wasn't going to be used in any way that Crane Company didn't want it to be, why, Crane Company would probably sell him."

[fol. 233] Mr. Eliel wrote the letter of July 1st, which is a part of People's Exhibit No. 18, addressed to the Builders' Exchange, attention of Mr. Crawford; Mr. Eliel says the letter of June 29th, addressed to Mr. Crawford by Mr. George, and which is a part of People's Exhibit No. 18, Mr. George showed Mr. Eliel the copy; no one in particular requested Mr. Eliel to send to Mr. Crawford the information contained in the letter of July 1, 1922, and which is a part of People's Exhibit No. 18. There was no understanding between Eliel and the Builders' Exchange that the Industrial Association would furnish the information contained in said letter; the Industrial Association volunteered to do it, (it was all a part of our strike); there was a co-operative relationship between the two organizations.

Witness seldom received from Plumbing Supply houses these reports on purchases of materials by plumbing contractors. Witness does not know whether or not the letters contained in People's Exhibit No. 18 contained all of the reports of that character, sent by him on behalf of the Industrial Association of San Francisco to the Builders' Exchange by Mr. Crawford.

PEOPLE'S EXHIBIT NO. 26

a letter addressed to Mr. O'Grady, one of the attorneys for the "state" in the above entitled case, and in response to a request of Mr. O'Grady, reads as follows:

"Industrial Association of San Francisco, Santa Fe Building

Address all communications to the Company.

Aug. 26th, 1922.

Mr. A. L. O'Grady, Attorney-at-law, Mills Building, San Francisco, Cal.

[fol. 234] DEAR SIR: You will please find below the names of those firms with whom we have been supplying plumbers' lists who are members of the Industrial Association:

Geo. H. Tay Co.

Crane Company.

Richmond Sanitary Mfg. Co.

P. E. O'Hair & Co.

Haines, Jones & Cadbury Co.

Republic Supply Co.

H. Mueller Mfg. Co.

Mark-Lally Co.

Dalziel Moeler Co.

Wolverine Brass Works.
 Holbrook, Merrill & Stetson.
 California Steam & Plumbing Supply Co.
 M. Stulsaft & Co.
 R. W. Kinney Co.
 General Machinery Co.
 Mott Co. of California.
 American Radiator Co.
 Dunham, Carrigan & Hayden Co.
 Baker, Hamilton & Pacific Co.
 Standard Sanitary Mfg. Co.

The following are firms to whom we have also been sending lists who are not members of the Association:

Great Western Supply Co.
 Grinnell Co. of the Pacific.
 Chas. F. Hause Mfg. Co., Inc.
 James B. Clow & Sons.
 Central Specialty Co.

Very truly yours, Industrial Association of San Francisco.
 Paul Eliel."

Cross-examination:

The strike referred to in testimony of witness is the Industrial strike of the plumbers existing since April 10, 1922; at various conferences testified to on direct examination by witness plans were suggested for bringing about a termination of the strike; among the questions being discussed the location of guards on buildings on which the American Plan was being used in their erection; whole conduct of the strike was discussed.

[fol. 235]

Vol. 4

Date: April 26, 1923.

PAUL ELIEL

Direct examination resumed:

PEOPLE'S EXHIBIT No. 27

consists of five reports made by Inspectors of the Industrial Association of San Francisco, they being samples of the several thousand reports on file with the Industrial Association of San Francisco, and are as follows:

"Industrial Association of San Francisco, Inter-departmental memorandum. From Mr. Hess, to Mr. De Jung. Subject: P. E. O'Hair. Date, 10/19/22. P. E. O'Hair truck 790818 from store delivered to W./W. of 16th Ave. 100' north of Fulton, 1—Y soil pipe fittings. F. Sasso, plumbing contractor. 3/15 p./m."

"Industrial Association of San Francisco, interdepartmental memorandum. From Mr. Hess to Mr. De Jung. Subject: P. E.

O'Hair. Date, October 5, 1922. P. E. O'Hair truck #790819 from store delivered to E./S. of Franklin St., 40' south of Francisco St. 2 bath tubs. F. Sasso, plumber contractor. 9:30 A. M.

P. E. O'Hair truck 790818 from store delivered to G. Rehn's, 1979 Mission St., one bath tub. 8:30 A. M.

Ford delivery #604527 picked up at P. E. O'Hair's and delivered to Second Ave. and Geary Sts., 1 flush box cover, 1 package fittings. Anderson & Roe, Plumbing contractors. 1:10 P. M.

Ford Touring Car 562380 picked up at P. E. O'Hair's and delivered to N./E. corner of Divisadero St. & McAllister 1 toilet comp. J. Kennedy, plumber, 2416 Folsom St. 1:30 P. M.

Express Truck #21800 picked up at P. E. O'Hair Co. Warehouse and store—4 water boilers 4 slop sinks 12 toilets 12 flush [fol. 236] boxes 12 seats 1 bath tub 12 lavatories. Picked up at Standard Sanitary Mfg. Co., Bluxome St., between 5th and 6th Sts., 6 wash basins, delivered to Geo. Rehn's, 1979 Mission St. 4:10 P. M.

"Express truck #21800 from P. E. O'Hair to Montello S. S. Co. shipment for Vallejo, 1 slop sink 1 lavatory 2 sinks. 4:30 p. m."

"Industrial Association of San Francisco Interdepartmental memorandum. From Mr. Hess to Mr. De Jung. Subject: P. E. O'Hair Co.—O. T. F. Co.,—Standard Sanitary Mfg. Co.,—Central Plumbing Supply Co. Date, 10-16-22.

Express truck #21800 picked up at P. E. O'Hair warehouse and delivered to E./S. of 5th Ave.; 150' north of Kirkham St., 2 bath tubs. Weinholz job. 9-30 A. m.

O. F. T. Co., truck 543012 delivered to 3366 San Jose Ave., Wm. Carmichael Plumbing Shop, 6 lengths 2 in. Galv. pipe 12 lengths 1— $\frac{1}{2}$ in. Galv. pipe, 3 bdl. 1-in. Galv. pipe 4 bdl. $\frac{3}{4}$ in. Galv. pipe 12:10 p. m. 12 lengths 4 in. soil pipe 8 lengths 4 in. soil pipe fittings, 1 bale okum.

P. W. O'Hair truck 79818 picked up at warehouse 4 flush boxes 4 toilets 2 wash basins 2:20 p. m. Picked up at Standard Sanitary Mfg. Co., Bluxome St., bet. 5th and 6th St. 2 wash basins delivered to P. E. O'Hair's store.

P. E. O'Hair truck #50290 picked up at Central Plumbing Supply Co., and delivered to S. P. Co., shipment to Verdi, Nevada 2 bath tubs 3 water boilers 2 toilets comp. 3:05 p. m.

Ford delivery 186205 picked up at P. E. O'Hair's and delivered to 554 Howard St., Albert Meyer, Plumbing Cont., 3:45 p. m. 2 lengths 4-in. soil pipe 6 4 in. soil pipe fittings—2 2" soil pipe fittings."

The Mr. Hess and the Mr. De Jung are Association Inspectors.

[fol. 237]

PEOPLE'S EXHIBIT No. 28

consists of two reports to the Industrial Association of San Francisco, one by the Mark-Lally Company and one by M. Stulsaft Company of San Francisco, and are as follows:

"M. Stulsaft Co., Plumbing Supplies, 647-649 Mission St.,
San Francisco, Cal.

June Sixteenth, 1922.

Industrial Association of San Francisco, Santa Fe Building, San
Francisco, Cal.

GENTLEMEN: Agreeable to your request, we are listing below orders held by us for plumbing supplies for the several plumbers on the list, viz: Edward E. Madden, to complete job, 2 bath tubs, 6 lavatories.

Albert I. Molliis, job, east side of 12th Avenue south of Geary. 2 sets finish fixtures. Job, west side of Edinburg, 300 feet east Excelsior, 6 sets finish fixtures. Alteration job, 108 Congon Street, Sunnyside, 2 sets finish fixtures. Job, northeast corner Church Street near 28th. Alteration job, 1 set finish fixtures. Job, 1009 Divisadero Street, 2 sets finish fixtures. Job, north side Taraval, 200 west 34th Street, 2 sets finish fixtures. Job, 108 Congo Street, 1 combination and 1 lavatory, extra."

Then follows the names of E. Sugarman with a list of supplies and a list of the jobs.

Trusting this will be to your satisfaction, we are, Respectfully yours, M. Stulsaft Company, by Morris Stulsaft."

Mark-Lally Company, San Francisco, Oakland, San Jose, Fresno, Stockton, Los Angeles, to F. Kohler. Address, ——. All deliveries must be made within 90 days. Location of job, 37th and Geary Street, Job No. 23. Owner: Worden, Jo. Architect, ——".

(Then follows a long list of plumbers' supplies.)

[fol. 238] The reports contained in People's Exhibit No. 28 were asked for by the Industrial Association from the supply houses, because, "certain of these plumber supply houses were selling materials to anybody, and this was merely checking up on some of those houses, in an effort to control the situation in any way that we possibly could."

In case a report of an Inspector showed that a particular plumber supply house was selling goods to some plumber with full union crew, witness would often go down and talk the situation over with him, and see whether or not it was the result of error or wilful negligence, or any other circumstances. As a rule the supply house never refused to respond to the suggestion of Mr. Eliel, although some of them did not comply at times.

The reports of supply houses to the Industrial Association of contracts purported to be the quantities of materials still due under special contracts; whenever an order was made to a supply house, the statement of the order was sent to the Industrial Association be-

fore delivery of the goods; the purpose being to prevent duplication as there were instances where some of the supply houses were delivering three or four times over on the same order. The duplication was stopped as it was not felt that its continuance would be conducive to the general success of the strike.

"It was our hope that the plumbing supply houses on the lists would not receive plumbing goods in excess of the contracts they held at the time the strike started with the several jobbing houses."

The lists referred to are the lists of plumbing contractors which were sent out to the various supply houses by the Industrial Association [fol. 239] through Mr. Eliel; it was the hope of the Association, "that the plumbing contractors whose names appeared on the lists would not receive any plumbers supplies except those which they had ordered and had not yet been delivered."

PEOPLE'S EXHIBIT No. 29

is the Constitution and By-Laws of the Industrial Association of San Francisco; parts of it are as follows:

"Know all men by these presents: That the undersigned have this day voluntarily associated themselves together for the purpose of forming a voluntary unincorporated association, and they have and do hereby adopt the following constitution and by-laws governing said association:

Name.—First. The name of said association shall be 'Industrial Association of San Francisco.'

Objects.—Second. The purposes and objects for which it is formed are to promote the happiness and prosperity of the people of San Francisco, and, thru harmony and efficiency, to make of San Francisco a great metropolis. To accomplish this, it is the object of this association to aid in making San Francisco constantly attractive, first, to men who desire to work; second, to men engaged in constructive enterprises; and, third, to investors of capital. In the attainment of these purposes and objects, the Industrial Association commits itself to the policy of furthering and preserving certain basic principles indispensable thereto. Among these basic principles are: (1) The right of any person to seek, secure and retain work for which he is fitted, and the right of the employer to engage or dismiss employees, should not be abridged or denied because of membership or lack of membership in any organization or association of any [fol. 240] kind. * * *

"(2) Efficiency in industry: This should be created and maintained to enable our enterprises to cope with those of other places. Superior skill and industry in work should be permitted to earn an adequate reward. The establishment of this principle, however, is

not to be used to reduce the earnings of a less able man below a fair return for the work done. No artificial limit or restriction should be placed upon the normal production of any man or upon the use of any appliance, invention or other means to increase output, always having due regard for the health, safety and well-being of the individual.

"(3) The right of management is inseparable from responsibility for industrial results. Therefore the right of the employer to engage or dismiss men individually on merit must not be circumscribed; the right on all occasions, however, to be exercised only upon broad principles of justice, and with a recognition of the obligation on the part of management to co-operate with the employee in securing so far as possible continuous employment.

"(4) No understanding should be reached between employers and employees that ignore the public interest, and no agreement should be tolerated that is illegal or contrary to sound public policy, whether made between employers themselves or with their employees or others.

"The office and principal place of business shall be the City and County of San Francisco, State of California."

"Dues.—The annual dues of each member shall be twelve dollars per year, payable in advance annually or quarterly at member's option.

"Article Eleven. Voluntary Association.—This association shall [fol. 241] be purely a voluntary association and in no sense a co-partnership.

"Name and Object.—Its object shall be to further the industrial welfare of San Francisco, as more particularly set forth in the Constitution.

"Article 2. Qualifications.—Any person, firm or corporation residing, doing business, owning property in or interested in the advancement of San Francisco shall be eligible to membership."

"Section 4. Prohibited Appropriations.—There shall be no appropriations of money noted either by the Board of Directors or by the Association, except for the necessary purposes and business of the Association.

"Amendments of By-Laws.—These by-laws may be altered or amended at any time by a vote of 21 members of the Board of Directors."

None of the Sections above quoted have been amended, abrogated or changed.

Witness does not know the total amount of money subscribed to the Industrial Association of San Francisco, either in cash or in paper.

Redirect examination:

A portion of the expenses of the permit bureau of the Builders' Exchange have been paid by the Industrial Association of San Francisco; practically all of the revenue of the Industrial Association is derived from dues provided for in the by-laws; the Association has not collected or attempted to collect subscriptions from various citizens to further its purposes and aims; the Association obtains a [fol. 242] small amount of income from rent on property that it owned and receives interest on notes which it holds in connection with the sale of that property. The Industrial Association did not prepare the subscription list and sent it to the various people; no subscriptions have been made to the Industrial Association of San Francisco.

PEOPLE'S EXHIBITS NOS. 22, 23 AND 24

introduced, one of them reading as follows:

List No. 11, July 7, 1922. Destroy all previous lists. "Aaron, O.; Anderson & Roe; Band, S. W.; Good Manufacturing Company; Hennesey, A. E.; Higgins, C. W.; Kohler, F.; Lettisch, A.; Looney, J.; Madden, E. E.; May, Gus; May, Louis; Molliis, A. I.; Mullins, J. J.; Noonan Bros.; Peterson Company, C.; Rehn, George; Stenger, A.; Sugarman, E.; Ward, H.; Weinholz, N. G."

("I will satisfy myself with reading one.")

WM. F. DONOHUE, witness for the people, testified as follows:

Residence Clayton Court Apartments; occupation Inspector for the Industrial Association since November, 1921; before that he was employed by the Builders' Exchange through Mr. Wm. H. George, who is one of the defendants in this action; has been working for the Builders' Exchange for about four months; as such he inspected different jobs to see that they were operated under the American Plan; filed reports thereon and according to instructions from Mr. George, reported whether the jobs were operated union or non-union; a Union job was one manned strictly with Union labor, and if he found such he reported it to the Exchange; Mr. Wm. Bowie went with him as an inspector from the employ of [fol. 243] the Builders' Exchange to that of the Industrial Association; the reports now made are delivered to Mr. De Jung who is in charge of the Inspecting Department of the Industrial Association.

Mr. Donohue made reports of the same character as set forth in People's Exhibit No. 27, and in the course of his duties he reported to the Association the destination of building materials; it is accomplished by seeing these materials delivered, following the

materials on the wagons from the dealers to the job on many occasions, and making report thereon in writing to the Industrial Association; this happened in San Francisco.

Cross-examination :

Mr. Donohoe as such inspector reported to the Association or to the Committee of the Builders' Exchange, a case where the contractor was operating his job and employing some Union men and some non-union men; he also would report whether the Impartial Wage scale was in effect, and made such report both to the Builders' Exchange, and later to the Industrial Association, when he became employed by the latter; made such reports about wages during the strike and up to date.

W. P. Goss, witness for the People, testified as follows:

Residence 4640 Geary Street, San Francisco, California; occupation Master Plumber; member of the Master Plumbers' Association, which is composed of members engaged in the plumbing business in San Francisco, but does not include all the plumbing contractors; is acquainted with Mr. De Jung, an employee of the Industrial Association of San Francisco; also Mr. Paul Eliel; he has visited the [fol. 244] office of the Industrial Association of San Francisco in the Santa Fe Building quite often, and during same often met and conferred with Mr. De Jung, as well as Mr. Paul Eliel; talked to them about plumbing contractors, but did not make any reports; the discussion was as to whether they were operating entirely Union or on the American Plan, and witness agreed with Mr. Eliel and Mr. Max Kuhl or Mr. De Jung that he would report to them certain plumbing contractors; that is, the ones running strictly union; those hiring nothing but union men; all of the reports were oral; none written. Witness visited the office of the Industrial Association frequently every day. To determine whether a plumbing contractor of San Francisco was employing Union plumbers exclusively, all the witness had to know was whether a Union man was working for them or not, as the Union declared that they would not work in any plumbing shop that had anything but union men working for it; he would report to the best of his knowledge as it was brought to him. Witness is acquainted with Mr. Geo. A. Bell of the Industrial Association with whom he conferred on the occasion of his visit to the Industrial Association of San Francisco, sometimes talking about the plumbing contractors employing Union Plumbers, among other topics of conversation. Witness saw lists similar to People's Exhibit- No. 22, 23, and 24, in the office of the Industrial Association; they were shown to him by different people, Mr. Eliel being one; does not know how many were shown to him, and does not know how many were prepared and sent out by the Industrial Association.

Witness is acquainted with Mr. L. E. Crawford, Secretary of the Industrial Relations Committee of the Builders' Exchange; met him on occasional visits, but did not make any reports to him of contractors employing Union Labor exclusively, although he dis-[fol. 245] cussed the matter with Mr. Crawford, and discussed different contractors with him, but not every one; discussed whether or not plumbing contractors were running entirely union or on the American Plan, at times giving Mr. Crawford the information which he possessed in that regard. Mr. Goss does not hold any office in the Industrial Association and never did, but is President of the Master Plumbers' Association of San Francisco and has been for about a year and four months; this organization is a corporation, its secretary being Mr. Furman; Mr. Hahn is the Assistant Secretary.

PEOPLE'S EXHIBIT No. 30

Being minutes of a certain special meeting of the Board of Directors of the Master Plumbers' Association of San Francisco, held July 19, 1921, reads as follows:

"Special Meeting of Board of Directors, July 19th, 1921, William P. Goss, Presiding

Mr. Coleman states that a committee acting on the advisability of joining the Builders' Exchange reports that the committee met the officers of the Builders' Exchange, and reports as follows:

To the Board of Directors, July 19, 1921:

We, your committee appointed to investigate and report on the advisability and responsibility of representation in the Builders' Exchange, most respectfully report and recommend that the Master Plumbers' Association, Inc., give its full support to the policy as set forth by the Builders' Exchange, and known as the American Plan, and we further sanction representation in the Builders' Exchange by a member selected by those members now affiliated in the Builders' Exchange.

(Signed) Alex Coleman, George Y. Morton, C. Peterson,
Frank J. Klimm.

Mr. Pinkerton moves *in* the adoption of the resolution presented [fol. 246] by the Committee, Mr. Silva seconds. Motion put and carried.

The Board orders a special meeting of the Association on Friday eve with a fine of \$2.50 for nonattendance.

The members of the Board think it is advisable to call a meeting of the apprentices Monday Eve, July 25th.

Adjourned 10:30."

Although the minutes are not signed, they are the regular minutes of the meeting.

Mr. Goss obtained from different sources the data which he reported to the Industrial Association and the Builders' Exchange concerning plumbing contractors, most of the data being received from inspectors of the Industrial Association, as he did not go out looking for it; some of the members of the Master Plumbers reported to him when some of the men were not working strictly union, and he did not ask Mr. De Jung to investigate them; but Mr. Goss himself did not run down reports to see if they were correct; he traced them through inspectors, or sometimes Mr. Goss would meet some one on the street who would tell him about them, whereupon he would give such reports to the Inspectors of the Association and sometimes investigate them himself, going out on the job and reported the result of his investigation to the Industrial Association, but not to the Builders' Exchange, reporting to Mr. De Jung or Mr. Eliel; reported to Mr. Bell seldom. Witness and Mr. Bell did talk over different men, how they were operating, and different problems that came up.

Lists similar to People's Exhibit Nos. 21, 22 and 23, being lists of plumbers who were not operating in accordance with what was called the American Plan, were always available to the witness; as he knew [fol. 247] where he could get them any time; which lists he consulted but did not investigate each of the reports. He is a contracting plumber.

Cross-examination:

Mr. Goss first went to the Industrial Association to call on either Mr. Eliel, Mr. De Jung or Mr. Bell, some time previous to the strike, which was declared on April 10, 1922; the purpose of his visit was because they had anticipated some trouble and he went there to see what they could do for them (the plumbers and plumbing contractors) in case they had trouble with the men; they had trouble with the men, for on Saturday (date not remembered) the business agent from the Union came out and informed him that if there was any one working in our shops on Monday morning that did not carry a Union Card, the rest of the Union Men would not work; at that time he had men working in his shop who did not carry Union cards; when notified by the Business Agent of the Plumbers' Union as above stated, he immediately called a meeting of the Board of Directors and they voted that they would not give in to the Union demands so that on Monday all of the union men left the employment if any one had any non-union men working; so they took in boys and one thing or other, sending east for a lot of men and picking up a lot of young men here and opening up a school and training them; the Industrial Association did that.

The purpose of the Resolution in the minutes of the meeting of the Master Plumbers' Association held July 19, 1921, resolving that the Master Plumbers' Association would affiliate with the Builders' Exchange was passed because the question came up in regard to the impending trouble over the Impartial Wage Board award, and the

[fol. 248] master plumbers had had several meetings with Journeymen, who were talking about not living up to that award, or in other words, going out in sympathy with some of the other craft; "we decided we were going to affiliate,—we thought the American Plan was the proper thing, and the Association decided to support it.

O. T. OLIPHANT, witness for the People, testified as follows:

Residence, 1358 Plymouth Avenue, San Francisco; occupation Sales Manager of Geo. H. Tay Company, a corporation organized under the laws of California, having its principal place of business in the City of San Francisco, at 599 Mission Street; engaged as a wholesaler of plumbing and heating supplies; business so engaged since 1849; witness connected with firm since 1905; the principal source of supplies of plumbing materials in which the George H. Tay Company deals comes from all parts of the United States; its sales territory is the northern portion of California; the principal goods dealt in by the company are plumbing, outfitting and valves, heating materials, some pumps and gas engines.

The George H. Tay Company received a letter similar to People's Exhibit No. 20, and one similar to People's Exhibit No. 21.

Witness was present at the meeting referred to in People's Exhibit No. 20, (meeting held May 31, 1922) and was present as a representative of the George H. Tay Company; he attended more than one of such meetings; they were held at the Santa Fe Building in the office of the Industrial Association of San Francisco; at these meetings he and others were told that lists would be furnished all [fol. 249] plumbers who were operating at that time in opposition to the American Plan. George H. Tay Company is a wholesaler and not a dealer; witness had seen lists similar to those introduced as People's Exhibits Nos. 23, 24 and 25, said lists being sent to the witness in care of the George H. Tay Company; witness thinks that he received all that were sent out, approximately thirty (30); he destroyed previous lists as the next one was received, the last list being the one which included all of those who were supposed to be operating in opposition to the American Plan; therefore all previous lists were of no use; witness desired the information contained in the lists; witness complied with the requests contained in People's Exhibit No. 21, by sending the Industrial Association the information desired; some of the representatives of plumbers' supply houses of San Francisco, present at the meetings testified to are: C. W. Weld of the Crane Company, Mr. Middleton of the Richmond Sanitary Manufacturing Company, Mr. Leary of the Mueller Mfg. Company, Mr. Andrew Dalziel of the Dalsiel-Moller Company, Mr. Lamond of the Wolverine Brass Works, Mr. H. Morris of the Holbrook, Merrill & Stetson Company; there were others present but witness cannot remember the names.

Mr. Oliphant requested copies of the aforesaid lists to be sent to the George H. Tay Company, and likewise all the other members made the same request, who were present at that meeting.

Witness had copies made of these lists as received; distributed copies to several of the employees of the company, clerks, store clerks, salesmen inside, instructing them that if anyone whose name appeared on that list made inquiry for material, that before taking the order for the material they were to be referred to the witness, in order that the witness might be able to see them before he accepted the [fol. 250] order from them and talk to them about their working in opposition to the American Plan; one of the plumbing contractors whose name appeared on the list visited the place of George H. Tay Company for the purpose of buying dealers' supplies, but the party did not come to see the witness, he spoke to the clerk.

The list of supply houses set forth in People's Exhibit No. 19, represents the plumbing supply houses who handled all or nearly all of the plumbing and steam fittings supplies in the City of San Francisco.

No cross-examination.

Redirect examination:

Mr. Oliphant knows the firm of N. O. Nelson Manufacturing Company, Los Angeles, California, and went to Los Angeles to see them for the partial purpose of interviewing their manager, in November, 1922; Mr. Goss, President of the Master Plumbers' Association, accompanied him; they called upon Mr. Fitzpatrick, the Manager of the Nelson Company, and witness called the attention of Mr. Fitzpatrick to the American Plan, asking Mr. Fitzpatrick if he knew anything about it, its existence and its purposes; and witness may have asked Mr. Fitzpatrick if he had sold any supplies to plumbing contractors in San Francisco.

Witness spoke to Mr. Max Kuhl about going to Los Angeles and the expenses of the witness being paid by George H. Tay Company, but witness did not go to Los Angeles for the express purposes of the Industrial Association's affairs; Nelson & Company are jobbers in plumbing supplies; witness may have had one of the lists with [fol. 251] him, similar to People's Exhibits Nos. 22, 23 and 24; the Nelson Company was not asked to agree not to sell plumbing supplies to any of the persons mentioned in the aforesaid list, or others like it.

Mr. Fitzpatrick stated that he was not soliciting any business in San Francisco, and had not received any great amount of business voluntarily from San Francisco; witness called on all of the jobbers in Los Angeles; Mr. Oliphant acquainted Mr. Fitzpatrick with the strike conditions in the hope that he would follow the thoughts of the members of the Industrial Association; but Mr. Goss also had other business in Los Angeles so witness believes; the strike was in existence in San Francisco at that time.

JOHN R. WINSLER, witness for the People, testified as follows:

Residence 1556 Taylor Street, San Francisco, Calif., occupation. Manager of the branch of the Republic Supply Company, a corpo-

ration organized under the laws of California, whose officers are: A. P. M. Pike, President; J. M. Cummings, Vice-President; Robert Schweitzer, Secretary; and its place of business is 670 Second Street, San Francisco; the company sells throughout California, pipe, valves, sheet iron; witness has seen lists similar to People's Exhibits Nos. 22, 23 and 24 at the office of the company, the lists coming through the mail.

Witness instructed the clerks in case that they had inquiry from any of the plumbers on the list, to refer them to the witness, the object being to find out how they were operating before their orders would [fol. 252] be taken, the purpose being to co-operate with the Industrial Association and to keep the materials going in the channels of open shop as much as possible, it being the purpose of witness according to understanding that go goods were to be sold by the Republic Supply Company to any persons not operating under the American Plan; not to sell any goods to any one whose name was on the list.

Witness attended several meetings at headquarters of the Industrial Association of San Francisco at the Santa Fe Building at which were assembled dealers in plumbers and steamfitters supplies, there being seven or eight of said meetings, quite a number of plumbing jobbers being present.

It is stipulated that those whose names are in People's Exhibit No. 19, were present by representatives at the meetings referred to; it is stipulated that the witness for the Republic Supply Company received lists similar to People's Exhibit No. 20 and 21, coming to his firm through the mail; said People's Exhibit No. 19 contains the names of all or nearly all the plumbing supply houses in San Francisco.

At the meetings attended by witness there was also present a representative of the Industrial Association of San Francisco; during this period testified to by the witness, there was a strike on in San Francisco; a Plumbers strike; none of the persons mentioned in People's Exhibits Nos. 22, 23 and 24, applied to the Republic Supply Company to buy plumbing or steamfitting supplies.

A. W. MIDDLETON, witness for the people, testified as follows:

Residence 1464 6th Avenue, San Francisco; he is the Manager of the Richmond Sanitary Manufacturing Company, whose place of [fol. 253] business is at 441 2nd Street, San Francisco, and is engaged as jobber of plumbing supplies, particularly plumbing fixtures, pipe and fittings, which includes also enamel ware, earthen ware; the Richmond Sanitary Manufacturing Company obtains a few items manufactured in San Francisco; others are obtained from California and the East; the company does not manufacture in San Francisco, but purchases some materials that are made in San Francisco by other people.

Lists similar to People's Exhibits Nos. 22, 23 and 24 were received by the Richmond Sanitary Manufacturing Company and the

witness as its representative; twenty-five or thirty of such lists were received; through the mail; the lists when received were turned over to the Credit Department, particularly to Mr. George Hines, the credit man;

Witness attended a meeting of the dealers in Plumbers' supplies held in the office of the Industrial Association of San Francisco; in fact, he attended six or seven of such meetings; at one meeting the witness requested a list of those not operating under the American Plan, and instructed each of those present to do as they pleased about the persons — were on said lists; but it was witness's understanding that the general purpose was to endeavor to put San Francisco on the American Plan basis, and therefore was not in favor of selling to people whose names were on the lists aforesaid.

These lists were handed to Mr. George Hines, whom witness instructed to refer any inquiry to witness, from any one whose name was on the list, and Mr. Hines was told that the Company was in sympathy with the American Plan, and for him to act accordingly; that was, not to sell any one that was on a union basis; the Company sold to certain people whose names were on the lists, but who had [fol. 254] contracts taken prior to the strike situation, and yet had to fill these contracts; that goods were yet to be delivered to fulfill the contracts; Mr. Hines was instructed to take all matters pertaining to the lists up with the witness personally whenever he had an inquiry from any of the different plumbers, "for the simple reason that we were in sympathy with the American Plan, and the men that appeared on that list were not, and for that reason, our materials should go to people that were operating on American Plan basis; not only for that reason, but for the shortage of material that existed at that time, and still exists."

Cross-examination:

During the time referred to, there was a strike in San Francisco, of plumbers, and witness understood that it was clearly up to him to sell or not to sell those people who were not under the American Plan.

Witness is not the owner of the business of the Richmond Sanitary Manufacturing Company.

Only one of the dealers whose name appeared on the list applied to the Richmond Sanitary Manufacturing Company for materials; his name is Anton Lettisch; he did not get any materials, for the reason that practically all the material desired the company did not have; Mr. Lettisch at that time also owed a balance which had been standing unpaid for about 8 years; Lettisch had not purchased anything for six or seven years.

The Richmond Sanitary Manufacturing Company had a contract for selling materials at that time with the Peterson Company and Mr. Weinholtz, which contracts were fulfilled.

Redirect examination:

Witness did not hand the list referred to, to Mr. Haines because [fol. 255] Anton Lettisch owed the Company an unpaid balance, but

handed the list to Mr. Haines to show him the names of plumbers in San Francisco who were not in sympathy with the American Plan.

Witness thinks he received a list similar to People's Exhibit No. 25, which is a copy of the list numbered 30; nothing said to Mr. Haines when that list was given to him: he simply put it on his desk; the instructions concerning the names on the list applied also to the Secondary Plumbing Supply Houses whose names appeared thereon; the Company had contracts with some of the dealers whose names were on the list, but fulfilled them all.

Mr. MARK E. HENDERSON, a witness for the People, testified as follows:

Residence, 51-A Walter Street; employed by the H. Mueller Manufacturing Company as Assistant Manager; that company incorporated under the laws of the State of Illinois, and its principal place of business in San Francisco, is at 635 Mission Street; the sales territory being the entire Pacific Coast; dealers in plumbing, brass faucets and brass valves, all brass fittings, valves, faucets, including bath fixtures and bath supplies.

Mr. T. F. Leary is the local manager; the company does not manufacture any of the merchandise in San Francisco which it sells, its supplies coming from its factory located at Decatur, Illinois; witness has been with the H. Mueller Manufacturing Company for over eleven years, and in San Francisco since the first Monday in June, 1922.

Admitted by stipulation that the company and witness as its representative received lists similar to People's Exhibits Nos. 22, 23 and 24, these coming to the company through the mail; also lists similar [fol. 25:] to People's Exhibit No. 25; and also a letter similar to People's Exhibit No. 20; also letter similar to Exhibit No. 21; stipulated that a representative of the H. Mueller Manufacturing Company attended the meetings between the representatives of the Industrial Association and the Supply houses mentioned in People's Exhibit No. 19.

Witness talked to Mr. Leary, the Manager, concerning the lists, and witness was informed by Mr. Leary that they were lists of plumbing contractors who were supposed to be not operating in accordance with the American Plan; Mr. Leary said it would be the policy of the company to sell the contractors who were operating under the American Plan; no other further instructions; witness believes that his firm had contracts with some of the names appearing on the lists to sell supplies and complied with all of these contracts.

Mr. STEPHEN H. McCABE, witness for the people, testified as follows:

Residence 6201 Baker Street, Oakland, California; Sales Manager for the Grinnell Company of the Pacific, 453 Mission Street, San Francisco, a corporation organized under the laws of California, whose

officers are as follows: Mr. J. R. Dickerson is President; C. J. Reddy, Secretary and Treasurer, and General Local Manager; the business of the Company is jobber of pipe, valves and fittings, and contract for and install the Grinnel Automatic sprinkler system; not in the plumbing supply business, but carry cast iron fittings as steam fitters [fol. 257] use considerable cast iron fittings; Company does not manufacture its steam fittings or plumbers' supplies that it deals in, in San Francisco; the source of supply being the General Fire Extinguisher Company, Providence, Rhode Island; the sales territory is the northern portion of California down to Bakersfield; also have supply houses in Los Angeles; People's Exhibits Nos. 22, 23 and 24 and 25, were received by the Grinnel Company of the Pacific; received approximately thirty of said lists; when Mr. Reddy opened the first list he and Mr. Reddy discussed the situation, and they decided that as the Plumbers of San Francisco had not been favoring them with any of the business, the company would not solicit any business from any of those mentioned on the list; nothing was said about selling to any of those on the list should they come in to buy; Mr. Anton Lettisch was the only one on the list who applied to purchase from this company; also Band and George Rehn, prior to the receipt of said list; Mr. Lettisch had a list of plumbers' supplies not carried by this company, at least most all of them, did not sell him.

Cross-examination:

Did not have any business from the plumbers at all; not obligated to any body to sell.

Redirect examination:

Company employs only sprinkler fitters, no plumbers or steam fitters; no disputes between the Sprinkler Fitters and the firm.

B. E. POWERS, witness for the People, testified as follows:

Residence, 323 28th Avenue, San Francisco, Calif., am store manager [fol. 258] for Wolverine Brass Works, a corporation organized under the laws of California; its principal place of business is 210-216 Natoma Street, San Francisco; its officers are: L. A. Cornelius, President; Harold G. Cornelius, Vice-President; A. S. Le Monde is the Pacific Coast Manager; the directors are: A. S. Le Monde, May C. Le Monde, Walter High and witness; the company in business in San Francisco for thirteen years; witness working for the company nine years, and the last four years as store manager; the territory sold by the company is the entire Pacific Coast.

The Wolverine Brass Works received lists similar to People's Exhibits Nos. 22, 23, 24 and 25; these lists delivered to witness by Mr. Le Monde, the bookkeeper or office manager; conferred with Mr. Le Monde and he said that certain names on the list, possibly all, should be referred by the witness to the office if they asked for materials; does

not know whether any one on People's Exhibit No. 25 had any account with the company; when people were referred to the office it meant a reference to Mr. High or Mr. Le Monde, or whoever happened to be in the office at the time; none of those on the list were to be thus referred.

Materials sold by the company obtained principally by shipments from the East.

Cross-examination:

There was a plumbing strike on during this period in San Francisco; there were no contracts entered into prior to the strike; for the persons on the list the company had only a few back orders, all of which were filled.

[fol. 259] There were five different calls from people on the lists, which were referred to the office and witness does not believe any of them were sold materials; the company does not employ plumbers.

HENRY H. KRUGER, a witness for the People, testified as follows:

(That the testimony given on the trial of People vs. George et al., in the Police Court of San Francisco, before Judge Daniel O'Brien, admitted in this trial.)

Residence, 1105 El Camino Real, Burlingame, California; occupation, plumbing specialties; employed by Charles F. Hause Manufacturing Company at 937 Howard Street, San Francisco, a corporation organized under the laws of Nebraska, whose home office is at Omaha; business engaged in is an accessory business to the plumbing business, such as washers and valves, and small materials, waste-pipe cleaners, sewer rods, plungers of different character used in the plumbing business;

Witness is Manager of the Charles F. House Manufacturing Company in San Francisco; has been since July, 1921; witness saw lists similar to People's Exhibits Nos. 22, 23, 24 (People's Exhibits 17, 18 and 20 at the Police Court hearing); received two or three of such lists; Mr. Eckert was the predecessor of the witness as manager; the lists came from the Industrial Association, Santa Fe Building, whose offices the witness has visited just once, in order to learn what was being done at meetings held there; was present at the meeting held about August 4, 1922; Mr. Oliphant, Mr. Le Monde, and Mr. Leary [fol. 260] were there, about twelve or fifteen all together; representative of Crane Company also there; also Mr. Goss.

The main object of the meeting seemed to be about the labor question; there to be informed how many were working, and there were about 300 American Plan working according to his memory; journeymen plumbers under the American Plan; witness was summoned by telephone to attend the meeting.

Discussion as to where contracting plumbers were getting materials, who were not operating under the American Plan.

Company had eight salesmen outside the office and one in the office.

Witness told Mr. Eckert when he went into the office, when he showed him copies of the lists of people not working under the American Plan, not to sell them.

Mr. Hennessey, a name that appeared on the list, applied to purchase materials, but was refused; he was refused because his name was on the list.

Admitted that witness would testify if present that there was a strike on at that time.

Vol. 5

Date: April 27th, 1923.

LEWIS L. DURKEE, witness for the People, testified as follows:

Residence 437 Lake Street, San Francisco; Assistant Manager for Mark-Lally Company, whose business is wholesale steam and plumbing supplies; principal place of business located at 235 Second Street, San Francisco, California; witness, assistant manager of the company for about eight or ten years; the President is Mr. H. T. Lally, and the Treasurer Mr. F. Degomes; sales manager is Mr. H. L. [fol. 261] Allison; the company received People's Exhibits Nos. 22, 23 and 24; also 25; lists coming through the mail and were directed to the attention of the witness; addressed to Mark-Lally Company in care of the witness; lists were a list of union plumbers who refused to let American Plan men work on the same jobs with them; when lists were received they were turned over to Mr. Allison, whom the witness told to attend certain meetings, and to act with the majority, or to use his best judgment thereon; only meeting witness had knowledge of was the one that they had a letter about, which witness told Mr. Allison to attend and find out what was going on; witness recognizes People's Exhibit No. 20, letter dated June 1st, 1922; witness does not remember People's Exhibit No. 21, a letter dated June 6, 1922; the June 1st letter was accompanied by a list referred to; witness admits that he received all the lists, as the company was supposed to get all that were sent out.

The purpose of placing the names of certain dealers in plumbing supplies on the list dated April, 1922 (No. 25) was to secure cooperation in not selling said dealers; the company would not sell to one whose names were on the lists; the last list was received in November, 1922, so witness believes; after said lists stopped coming the company continued its policy of not selling plumbing supplies to firms or persons whose names appeared on the lists; the company is watching its accounts pretty closely as there is quite a shortage of material and the company is only selling material to such firms as have dealt with it regularly for years; witness instructed Mr. Allison to use his best judgment in selling those whose names appeared on the lists.

Sales territory of the Mark-Lally Company is California, Nevada,

Oregon and a little of Arizona; the company obtains its merchandise [fol. 262] principally from various eastern sources, from *from* eastern manufacturers.

Cross-examination:

The supplies dealt in by Mark-Lally Company could not be manufactured in San Francisco; the business policies adopted by Mark-Lally Company, testified to, was to aid in the adoption of the American Plan in San Francisco; at the time this was received the company had contracts with many whose names appear thereon, but all of said contracts were fulfilled; there was a plumbers' strike on in San Francisco during the period testified to by witness.

Redirect examination:

Several of the plumbers of the Mark-Lally Company were at that time striking; simply delivered supplies according to contracts entered into before this was received, but did not enter into any new contracts with any of these people, or make new sales to them.

Mr. HARRY L. ALLISON, witness for the People, testified as follows:

Residence 1845 Larkin Street, San Francisco, Calif.; sales manager for Mark-Lally Company; as representative of the Mark-Lally Company attended a meeting at the headquarters of the Industrial Association of San Francisco, in the Santa Fe Building, San Francisco, at which meeting there were present, Mr. Eliel among others; he attended several meetings at which were present other representatives of plumbing supply houses.

Admitted that Mark-Lally Company is a corporation organized under the laws of Nevada.

At the meetings referred to there was discussed the general condition existing at that time in the City and County of San Francisco; discussion was held relative to Union and American Plan labor.

Admitted that the Mark-Lally Company received People's Exhibits Nos. 22, 23 and 24, also 25, sent out by the Industrial Association of San Francisco; witness remembers receiving list No. 30 (Exhibit No. 25) dated November 6th, 1922; all of said lists are lists of Union Master Plumbers doing business here which the company decided not to sell; those mentioned under Secondary Plumbing Supply Houses, the witness knew some but did not know all; witness received the lists from Mr. Durkee and thereupon gave instructions to the employees of Mark-Lally Company that if any of the representatives of the concerns mentioned in the lists came to purchase goods from Mark-Lally Company, they were to be referred to witness for the purpose of questioning; witness wanted to be advised of any one coming to the company to buy materials who were

not on the books of the company as customers, and also as to how they were operating, whether the American Plan or Union; it was the policy not to sell those who were not operating under the American Plan.

Cross-examination :

Witness attended the meetings testified to so as to get information in order that he could properly conduct the company's business under the conditions then existing, there being a plumbers' strike on at that time; the company had contracts with some persons whose names appeared on the lists before they received said lists; these contracts were complied with and fulfilled; at the meetings referred to were discussions as to ways and means of bringing the strike then existing to an end. Mr. Eliel asked Mr. Allison to attend the meet- [fol. 264] ings; all of them having reference to existing conditions in San Francisco concerning the strike; none of those mentioned on People's Exhibit No. 25 (which is list No. 30, dated November 8, 1922) visited the company to buy supplies, except those who already had a contract with the company.

C. J. SCHAEFER, a witness for the People, testified as follows:

Residence, 330 Girard Street, San Francisco; occupation Shipping Clerk employed by the R. W. Kinney Company, a corporation organized under the laws of the State of California, whose place of business is 645 Howard Street, San Francisco; character of business, wholesale plumbing supplies; witness so employed for fifteen or sixteen years; has seen lists similar to People's Exhibits Nos. 22, 23, 24 and 25, which it is admitted were sent to the R. W. Kinney Company by the Industrial Association of San Francisco; copies of said lists were delivered to the witness by some one from the office of the company; they were placed out on the desk of the witness; the Secretary of the Company delivered them to witness; these lists were changed from time to time; Mr. Olsen instructed witness to send to Mr. Olsen any one whose name appeared on that list; Mr. Anton Lettisch, who was on a cash basis and whose name was on the above mentioned list, applied once to purchase plumbing supplies while his name was on said list, whereupon witness told him to go to the office; on that occasion Mr. Lettisch came in and witness went to look for material, but Mr. Lettisch got in conversation with some one in the office, which was as far as the material transaction went; no supplies were sold to Mr. Lettisch.

[fol. 265] The R. W. Kinney Company does not manufacture the plumbing supplies or other materials in which it deals, but they are received mainly from the east, some bought locally, the local articles being principally small pick-ups, like the Excelsior Brass and United Iron Works over in Oakland.

Cross-examination :

Supplies kept by the R. W. Kinney Company are not manufactured in California, but brought in from the East mostly; the credit of Mr. Lettisch with the firm was no good; during the period testified to there was a strike on in San Francisco, a plumbers' strike.

Redirect examination :

The company had no contract with Mr. Lettisch to sell goods to him; the Kinney Company does not employ plumbers and none of its employees were on a strike at that time.

B. F. BLAIR, witness for the People, testified as follows:

Residence, 765 18th Avenue, San Francisco, California; occupation or business, wholesale plumbers' supplies; the manager of the Haines, Jones & Cadbury Company is Mr. H. C. Marsh; witness is employed by that company; residence of Mr. Marsh is 148 Jordan Avenue; place of business of the company is 857 Folsom Street; engaged in wholesale plumbing supplies; territory of the San Francisco branch from Eureka to Santa Barbara; company does not manufacture locally any of the supplies in which it deals; great many of them bought in the eastern markets; some bought here; buy locally from the Pacific Sanitary Manufacturing Company and West Coast Porcelain Company, and Selby Smelting & Lead Company; buy locally plumbing supplies from the Pacific Sanitary Manufacturing Company, such supplies consisting of water closet bowls and bath tubs.

Witness attended some meetings, the exact dates not remembered, in the offices of the Industrial Association at the Santa Fe Building, San Francisco, California; witness does not recall seeing People's Exhibits Nos. 21 and 22; when attending meetings referred to witness did so as representative of the Haines, Jones & Cadbury Company; at such meetings representatives of other plumbing supply houses were present; witness also saw certain lists which came from Mr. Marsh, the Manager, who was one of the defendants mentioned in this action; Mr. Marsh usually put the lists on his desk without saying anything; believes Mr. Marsh was present at one or two of the meetings held at the headquarters of the Industrial Association of San Francisco; Mr. Marsh gave no instructions about the lists, but it was generally understood, "we were supporting the American Plan"; it was understood that anyone whose name was on that list coming in to purchase materials should either be referred to Mr. Marsh or witness; Mr. Marsh made a statement to the effect that we were supporting the American Plan; quite a number of lists were received by the company; witness does not remember seeing People's Exhibit No. 25, dated November 8th, 1922, but it is stipulated that said list was received by the Company; believes Mr. Lettisch applied to Mr. Phillips, the Shipping Clerk for materials after receipt of the

lists by the company; does not think any one whose names were on the lists applied for materials; the company and the witness were supporting the American Plan; the company is compelled to obtain most of its supplies from the East in order to keep in operation; the company completed its contracts with all members whose [fol. 267] names appeared on the lists mentioned heretofore.

There was a plumbers' strike on during the time mentioned in witness's direct examination; the company employed no plumbers.

Mr. ALBERT PHILLIPS, witness for the people (testimony given in Police Court of San Francisco, before Judge O'Brien):

Residence #58 Meda Avenue, San Francisco, Calif.; occupation, Shipping Clerk for Haines, Jones & Cadbury Company, since 1911; had seen lists similar to People's Exhibits No. 22, 23 and 24, (People's Exhibits No. 17, 18 & 20 in Police Court case), which exhibits he obtained through the office of Haines, Jones & Cadbury Company, the lists being delivered and placed in the basket in the manner that he received other mail or instructions. Witness received instructions from Mr. H. C. Marsh, Manager of the company not to deliver any goods without the O. K., nor to sell any goods to those appearing on or mentioned in the lists, without the O. K. of Mr. Marsh; such instructions he followed.

GEORGE W. STARK, witness for the People, testified as follows:

Residence, 131 Winchester Street; clerk for the Dalziel-Moller Company, a corporation existing under the laws of the State of California, with its principal place of business in San Francisco; officers of the company are, Mr. James Dalziel, President; Mr. Andrew Dalziel, Secretary and Treasurer; Mr. Anstruther Dalziel, Sales Manager; witness employed by company for over four years; company deals in plumbing supplies as a wholesaler; most of the supplies or articles dealt in by the company are obtained from the East; some from California; copies of lists similar to People's Exhibits No. 22, 23 & 24 were seen by witness at the office of the company; they were handed to him by Mr. Anstruther Dalziel, at which time [fol. 268] he was told, "be out of goods, do not have any goods, out of goods when these fellows apply."

Some of those whose names were on the lists did apply and they were told that the company did not have the goods; witness does not know whether it had the goods or not; they were mostly odds and ends; sales territory, Sacramento Valley, San Joaquin Valley, down the coast as far as Los Angeles; witness received two or three of the aforesaid lists, but does not know when the last one was received.

Mr. Lettisch was one of the persons who applied for materials; Mr. Lettisch applied on August 15th, 1922, and he was told, "we do not have the goods"; Mr. Lettisch dealt with this firm very little;

maybe one sale a month and it did not amount to much, shorts that he could not buy other places; the company had no contracts with any one on the lists at that time;

There was a plumbers' strike on in San Francisco at that time, during which witness and others of the company were supporting the American Plan, but the company did not have any plumbers and none of the employees of the company were on strike.

PERRY L. FRANCIS, witness for the people, testified as follows:

Residence, 3532 24th Street, San Francisco; Manager of the purchasing department of the General Machinery & Supply Company, located at 39 Stevenson Street, San Francisco; witness knows Mr. J. C. Messersmith, who is secretary of the company and has been for the last six years; witness has seen lists similar to People's Exhibits No. 22, 23 and 24, which were given to him by Mr. Messersmith who distributed all the mail to the various departments; there were fifteen or so of said lists given to witness.

[fol. 269] General Machinery & Supply Company deals in small tools and pipe fittings and valves, but does not sell plumbers as a rule, except valves, but the company has little call from the plumbers.

When lists were received from Mr. Messersmith, witness passed them on to one of the men in the Department who is a house salesman, to-wit: Mr. Ed. Holland, with instructions that if the houses named in the lists called on this firm to refer any orders to witness before they were passed upon or delivered.

The Company also received People's Exhibit No. 20 and 21 sent out by the Industrial Association, but witness does not remember seeing those letters or copies of them; no one attended the meetings in the headquarters of the Industrial Association from the General Machinery & Supply Company, as far as witness knows; when a list was received the previous ones were not necessarily destroyed; the last list received the latter part of the year.

The company received the following letter from the Industrial Association of San Francisco:

"General Machinery & Supply Company, 39 Stevenson Street.

GENTLEMEN: In conformity with the conclusions reached at the meeting held yesterday of representatives of several plumbing supply houses, you will find enclosed a list of master Plumbers operating at the present time on the Union basis.

Very truly yours, Industrial Association of San Francisco.
Paul Eliel."

So far as witness knows none of those whose names appear on the lists applied for supplies and none were refused.

JOHN C. MESSERSMITH, witness for the People (testimony given at the Police Court hearing before Judge O'Brien) :

[fol. 270] Residence, 1815 Broadway, San Francisco, Calif., is Secretary and Treasurer of the General Machinery & Supply Co., at 39 Stevenson Street, San Francisco, California; business is jobbers of machinery, machine tools, transmission equipment, pipe, valves, fittings, packing, and general supplies like that, which includes plumbers and steamfitters supplies; is a corporation organized under the laws of California, its officers being Charles E. Green, President; Allen L. Green, Vice President; Arthur E. Sugden, Vice President; John C. Messersmith, Secretary and Treasurer; witness has been such since February 19, 1919, prior to which time he was an accountant.

The company does not manufacture its own supplies, but imports them from the east, and sells in California north of the Tehachapi.

Witness has seen lists similar to People's Exhibit- No. 22, 23 and 24, (Exhibits No. 17, 18 and 20 at the police court hearing) but would not state that he saw the particular ones of such exhibit; these lists were put on the desk of the witness with the rest of the mail after the mail had been opened and after receiving them he turned them over to Perry Francis, the order Manager of the Order Department; these lists were understood by him to have been made out by the Industrial Association of San Francisco, but he did not know; understood that the names mentioned on the lists were operating closed shop, or Union Plan; it was stipulated that these lists came from the Industrial Association; did not give any instructions to Mr. Francis about the lists, or did any one else to the knowledge of the witness; witness believes that Mr. Francis asked for the lists; received several of said lists which were all handed to Mr. Francis; does not know why they were sent to his establishment; did not discuss these lists with any one; when he first received the lists he went [fol. 271] to Mr. Allen Green, and Mr. Sugden and Mr. Francis, and asked if those lists were of any interest to them and what he should do with them; witness did not know further whence they came; witness does not remember what they said to him; he did not know what it was about; Mr. Green said he did not know anything about them; Mr. Francis simply said that he would take care of, then shown the lists; witness did not know that the lists were lists of plumbing contractors not operating under the American plan; thinks he passed the second list over to Francis; paid no attention to directions, "destroy all previous lists."

Witness does not remember receiving a list similar to People's Exhibit No. 20 (People's Exhibit No. 22 at Police Court hearing); witness does not remember receiving a letter similar to People's Exhibit No. 21 (People's Exhibit No. 23 in police court hearing).

H. W. NOBLE, witness for the People, testified as follows:

Residence, 3295 Clay Street, San Francisco, California; Manager of the American Radiator Company; place of business is at Second and Townsend Streets, San Francisco; witness is the Manager; business, manufacturers of heating boilers and radiators; dealers in steam fitters supplies; company has been engaged in business in San Francisco for twenty years; the company has seventeen plants in the United States, but does not have any plants in California; sales territory of the company is California, Nevada and Arizona.

It is stipulated that lists similar to People's Exhibits No. 22, 23 and 24, were seen by witness but he could not positively identify People's Exhibit No. 25; cannot state whether or not he saw People's Exhibits No. 20 and 21, but they may have been received by the company; witness did not attend any of the meetings of the Industrial Association [fol. 272] at its headquarters in San Francisco, nor did any representative of the firm attend.

These lists were opened by mail clerk and placed upon the desk of witness who turned them over to the Assistant Manager with instructions to confer with witness if any parties named in the lists should apply for materials, as the witness wanted to give them special treatment, with the idea that before he would refuse any of those named on the lists he would look into it.

Mr. C. Peterson came in to purchase from the American Radiator Company and wanted a steam boiler and some radiators; the company did not sell him as witness felt it was not the right thing to sell him under the circumstances, as he was running a closed shop; Mr. Peterson was engaged in the business of plumbing and heating contractor.

Cross-examination:

The custom of the company has been to confine itself in its sales to people who are qualified to make proper installations; witness was a supporter of the American Plan and understood that the lists were to notify him of people with respect to their attitude towards the American Plan; the company had orders from Mr. Peterson on its files before they received a list with his name thereon, which orders were filled; also filled any other orders of others, some of which it had.

Redirect examination:

The policy of the San Francisco branch of the American Radiator Company over which the witness had jurisdiction, was in favor of the American Plan, as being that if men are equal then they can work without having to belong to the Union, and is not a closed shop, union and non-union men working together, is the understanding of the witness of that plan; under that plan the person could hire [fol. 273] a full crew of union men or a full crew of non-union men.

A. ZEITSCHEL, witness for the people, testified as follows:

Residence, 5738 Herman Street, Oakland, California; his business is that of wholesale dealer in pipes, valves, fittings, heating and plumbing supplies; is employed by the Great Western Supply Company, whose place of business is at 948 Folsom Street, San Francisco; he is the Secretary of the company; officers are H. Levitt, President, and E. Levitt, Vice-President; witness is secretary; company sells pipe, valves, fittings, some heating and plumbing supplies and its sales territory is California; deals in commodities which are imported from the east; saw lists similar to Peoples Exhibits No. 22, 23 and 24, they coming through the mail; he received them on his desk; same also applies to People's Exhibit No. 25.

Does not remember receiving copy of letter similar to People's Exhibit No. 20 or 21.

Witness was present at some of the meetings held in the office of the Industrial Association, at which were present representatives of dealers in plumbers supplies; witness remembers he was present at the meeting referred to in Plaintiff's Exhibit 20; witness does not remember receiving the letter set forth as People's Exhibit No. 20; received approximately 15 or twenty of the lists; attended three or four of the meetings of the Industrial Association; when the lists were received he gave Mr. Levitt a copy; also the shipping clerk received a copy from him, his name being Verl Jones; instructed Mr. Jones that if contractors came in whose names were on these lists, to take it up with Mr. Levitt, and if Mr. Levitt was not in to take it up with witness; he did so because he had been asked not to sell any [fol. 274] material to houses whose names appeared on these lists, and was asked at one of the meetings of the Industrial Association; none of those whose names appeared on the list applied to this company for supplies.

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FREDERICK A. HAMILTON, witness for the people, testified as follows:

Residence, 1329 Taylor Street, San Francisco; occupation, traveling salesman, with headquarters in San Francisco, at 101 Rialto Building, representing James B. Clow & Sons, dealers in plumbing supplies, whose place of business is Chicago. Clow & Sons have no other representative in San Francisco, in plumbing supplies. Clow & Sons sell heating supplies to the Williams Radiator Company. Territory covered by witness as sales representative is California, Nevada, Washington, Oregon, British Columbia, and Hawaiian Islands. Clow & Sons sells through the witness, specialties—fixtures that are not carried in this market, not staple fixtures. Witness received lists similar to People's Exhibits Nos. 22, 23, 24 and 25, through the mail, but does not recall how many of these lists were sent out by the Industrial Association, to which the witness is a contributor. Witness did not attend any meetings of the

Industrial Association. The lists referred to were sent to witness without his solicitation and were by him given only casual interest and consigned to the waste basket. Witness does not remember receiving lists similar to People's Exhibits Nos. 20 and 21. The names on lists—A. Lettisch, J. Looney and possibly May, have done business with Clow & Sons through witness but not since the receipt of the aforesaid lists. None of the above-mentioned desired to purchase anything from witness since said lists, nor were any refused the right to purchase. Witness did not receive any lists from Industrial Association concerning sale of plumbing supplies to those not operating under so-called American Plan.

[fol. 275] F. S. DUNN, witness for the people testified as follows:

Residence, 1870 9th Avenue, San Francisco; occupation, salesman for Crane Company, whose San Francisco place of business is 301 Brannan Street; Crane Company, a corporation organized under the laws of the State of Illinois, whose home office is Chicago, Illinois. Crane Company deals in plumbers' or steamfitters' supplies of every kind, including steam goods, pipes, fittings, valves, sinks, toilets, faucets, etc. Witness employed by Crane Company about 18 years past, and the sales territory of San Francisco office is San Francisco and San Joaquin Valley. Crane Company does not manufacture locally any plumbers' supplies but obtains some of its plumbers' and steamfitters' supplies from Pacific Sanitary Manufacturing Company, of Richmond, California; Kohler Company, of Kohler, Wisconsin; Standard Sanitary Manufacturing Company of Pittsburgh, Pennsylvania. Most of the plumbing supplies handled by Crane Company are imported from the East.

Witness has received lists similar to People's Exhibits Nos. 22, 23, 24 and 25, which were handed to him by the manager of the house, whose name is C. W. Weld, who is General Manager of the San Francisco branch. Witness states, "After the receipt of the aforesaid lists the only person whose name appeared thereon, who applied to Crane Company to purchase goods was A. Lettisch. He applied to witness to sell him supplies but witness did not because witness told him he would have to see the manager, who does not remember whether Lettisch offered to pay at that time, or not. Lettisch also applied to purchase supplies from the office, when witness told him could not deliver any more fittings to him; that he would have to take it up with the manager. Prior to receipt of lists, Lettisch had dealt with Crane Company, and had been sold plumbers' supplies.

[fol. 276] Cross-examination:

Lists, witness believed, covering plumbers operating on union plan. At time when lists were issued there was a plumbers' strike on; fulfilled contracts with Lettisch and others on lists, which were made before the lists were received by Crane Company.

Redirect examination:

At time of strike, none of the employes of Crane Company were on strike.

J. A. FURRER, witness for the People, testified as follows:

Residence, 2 College Terrace; occupation, shipping clerk of M. Stulsaft & Company, a corporation, organized under the laws of California, having its principal place of business in San Francisco, at 647 Mission Street. Witness employed about 10 years past by said company, which deals in plumbers' supplies, enamelware, valves, fittings, pipe, etc. Said company does not manufacture any supplies dealt in, but obtains them from the Richmond Sanitary Company, Point Richmond, and Eastern factories, Los Angeles, etc., but the greatest part, Eastern; sales territory of company from San Francisco, all over California, Seattle and Portland.

Witness received lists similar to People's Exhibits Nos. 22, 23, 24 and 25, sent by the Industrial Association, which were placed on his desk by some person connected with M. Stulsaft & Company. Had conversation with M. Stulsaft, who told him that if any parties on lists called for goods to refer them to office, which order was not given until after the receipt of said lists. One of said names on the list, to-wit: A. Lettisch, applied for supplies, probably four or five weeks after receipt of lists, but what he wanted witness does not remember and witness referred him to Stulsaft. Witness himself did not talk with Lettisch, referred him to the office pursuant to orders [fol. 277] from Mr. Stulsaft. Witness thinks Lettisch went to the office but did not succeed in buying plumbers' or steamfitters' supplies; however, witness presumes that he called for that purpose. Lettisch called several times and attempted to buy plumbers' and steamfitters' supplies, and witness thinks that several times he got small quantities, that is to say, small articles. Thinks lists were received sometime in September or October. Between receipt of first list and People's Exhibit No. 25, dated November 8, 1922, Lettisch applied to buy plumbers' supplies and several small orders sold to him. The value of said orders witness does not know. Other persons whose names appeared on said lists applied to purchase goods, but were not sold, because of orders received from M. Stulsaft.

Cross-examination:

Lists referred to contained names of plumbers operating on strictly union plan. Stulsaft & Company were running under the American Plan. There is no union in that place at the time the company favored the American plan. Witness not a member of the Industrial Association; does not know whether company had contract with Lettisch at time of the receipt of said lists; filled all contracts with persons on lists, which company had before lists were received. There was a plumbers' strike on at that time.

Redirect examination :

Stulsaft did not have any labor dispute with any of its employes at that time. Witness had lists until told to destroy them by Morris Stulsaft. After lists stopped coming, witness was told it was all right to sell again, and witness presumes goods were sold to those on lists; the refusal was between the receipt of the first list and the last one.

[fol. 278] J. F. STORMFIELD, witness for the People, testified as follows:

Residence, 579 O'Farrell Street; salesman for Holbrook, Merrill & Stetson, which is a wholesale plumbing supply house, with place of business at 656 Sixth Street, or Sixth and Townsend; company also has house furnishing goods as well. Company obtains most of plumbing supplies sold, from factories in the east, Standard Manufacturing Company and they get their porcelain from Richmond, California. Stipulated that the greater majority of supplies comes from the east. Company is a corporation organized under the laws of the State of California, having its principal place of business in San Francisco. Witness employed by company for about 32 years, but as salesman for the last 10 or 12. Several salesmen covering the territory of San Francisco—specialty men. Company solicits business in plumbing supplies—is to plumbing contractors generally, also to other plumbing supply houses where they run short.

Witness has seen lists similar to People's Exhibits Nos. 22, 23, 24 and 25, which were sent down from the office to his desk, but did not receive any instructions concerning the lists in writing, but the manager told him to observe the lists and not to sell to any of those people if they called. Name of general manager is Henry Morris, who is one of the defendants in this action, who also told witness if any of the persons whose names appeared on the lists came, they were to refer such persons to him. Some of the said persons did come to purchase goods, but were not sold; among whom was Antone Lettisch, who was told by the witness that witness could not sell him any material; he would have to go up to the office to see them about him. Lettisch asked for some materials and witness refused to sell him, pursuant to instructions received from Mr. Morris.

[fol. 279] C. W. Higgins and J. J. Mullin also appeared, both of whom were not sold, though they appeared seeking to purchase plumbing supplies. Witness refused to sell them pursuant to instructions from the main office. Witness received no further instructions from Mr. Morris other than those at the time the afore-said lists were received; on receipt of a list would destroy all previous ones. After receipt of list, witness sold to any person whose name appeared on the list.

Cross-examination :

Morris did not tell witness that men whose names appeared on the lists were operating strictly on the union plan. He did not go into details; Morris did not discuss with witness the reasons for refusing to sell men whose names appeared on the lists, simply gave instructions not to sell. Does not know anything about contracts with the company, as that was not within his jurisdiction. At the time of the lists, there was a strike on among the plumbers.

Redirect examination :

No difficulties between the employees and the company. The company did not employ any plumbers.

D. H. GULICK, witness for the People, testified as follows:

Residence 650 Bush Street; manager of the Mott Company of California; place of business, 553 Mission Street, San Francisco; a corporation dealing in finish plumbing fixtures. There are two classes of fixtures used in the plumbing business—roughing-in material and there is finish plumbing fixtures. Company does not handle soil pipe and fittings, and wrought iron pipe. Territory of the company is from Bakersfield and Santa Barbara north. Company gets its goods principally in Trenton, New Jersey, but buys some in California. Company buys at the West Coast and of [fol. 280] the Pacific Porcelainware Company, of San Francisco; company in business in San Francisco, 6 or 7 years, during which time witness has been resident manager. Stipulated that witness received lists similar to People's Exhibits Nos. 22, 23, 24 and 25, which came through the mail. Does not remember how many were received; probably few. Has no inside salesman; sells only to registered plumbers. Mr. Mitchell and witness sold to customers. When lists received witness did not see any names of persons with whom he had an account, or any orders on file for future delivery. Mr. Charles W. Higgins did not attempt to make any purchases after said lists were sent out.

Charles W. Higgins called on witness, told him, "I have been awarded a contract to do the plumbing on that residence" and said, "I don't have to use Mott's goods," to which witness replied that if that was his feeling to go ahead and buy the other goods. Higgins did not tell witness why he was going to substitute other goods for those sold by the other company. Witness presumes Higgins could save money thereby. When witness received People's Exhibits Nos. 22, 23, 24 and 25, he put them in his mail basket where they remained until destroyed.

Cross-examination :

Two hundred and fifty or three hundred plumbers in San Francisco. There was trouble over the American Plan at the time of

these lists. Labor troubles were prevalent at that time; no strike in his shop. No one else on list except Higgins applied to purchase goods; no contracts with any of said person. 70% of the goods handled are bought in Eastern market. Member of the Industrial Association of San Francisco.

[fol. 281] E. T. AUTH, witness for the People, testified as follows:

Residence, 630 56th Street, Oakland; manager of the California Steam & Plumbing Supply Company, at 671 Fifth Street, San Francisco; incorporated under the laws of the State of Delaware; principal office in Pittsburgh, Pennsylvania, which deals in steam and plumbing supplies, which includes earthenware, enamelware, pipes, valves and fittings. Territory of the company is all over Northern California. Stipulated that witness received a list similar to People's Exhibits Nos. 22, 23, 24 and 25, sent by the Industrial Association of San Francisco. Witness ten years local manager of company.

Most of materials handled by company comes from the east, the heaviest tonnage being in pipe and cast iron goods, made in Pittsburgh. Principal plumbers' supplies manufacturies are in Pittsburgh. People's lists above named came to his place of business by mail and were received by him. He turned over to the credit man, J. C. Powell and told Powell that if any of the people whose names were on the lists applied for goods to refer them to the witness personally. "One good reason would be on account of the credit." Of the names on the list only one was of a regular customer, that was J. J. Mullins. Reason why persons on lists were referred to witness was because theretofore they had not purchased from him and now that goods were scarce he did not feel that they should look to him now. Witness does not recall seeing lists similar to People's Exhibits Nos. 20 and 21. The company is a member of the Industrial Association of San Francisco. Witness attended some of the meetings concerning the sale or non-sale of plumbing supplies, possibly ten, at which were present representatives of different plumbing supply houses in San Francisco, and at which meetings something was said about sending out the lists referred to. [fol. 282] Stipulated that it be admitted that the aforesaid letters were sent pursuant to the meeting, or action taken at the meeting of the Industrial Association at which witness was present. Witness received possibly a dozen lists. Witness told credit men to fill in order of J. J. Mullin that was already in the house at the time of the receipt of lists, but if Mullin wanted any new material, to take it up with the witness and did so because Mullins was on the list referred to, also any other persons on lists would be refused delivery of merchandise unless it was on a previous order.

Cross-examination:

Lists were plumbers operating under the closed shop plan at which time witness was pursuing a certain business policy as there was a strike of plumbers then.

GEORGE A. HUGHES, witness for the people, testified as follows:

Residence, 645 Castro Street; knows complaining witness, Antone Lettisch, for about 5 years and that he is a Master Plumber and that Lettisch between June 1, 1922, until on or about November 8, 1922, visited plumbers' supply houses which were Grinnel Automatic Sprinkler Company, on May 2, with Lettisch wanted to get some steam fittings at which time the salesman went to the back of store and came and told Lettisch he did not have any whereupon witness and Lettisch went to Stulsaft Plumbing Supply Company on Mission Street, San Francisco, and gave same order that had been given the Grinnel Automatic Sprinkler Company, which order was filled; the fittings that Stulsaft were short of they telephoned to the Grinnel Company and it was filled. Witness and Lettisch then went to H. Mueller Manufacturing Company on Mission Street, San Francisco, where Lettisch wanted to get some loose key valves which are plumbers' supplies and salesman said, "I got orders not to sell you any material". Lettisch did not get any material; does not remember whether he offered to pay cash. Witness and Lettisch then went to Crane Company, in San Francisco, where Lettisch went to get a couple of high pressure valves. Salesman told Lettisch, "Yes, we have got them, but you have to see the manager". The manager asked Lettisch if it was an old contract or a new one, to which Lettisch replied, "New contract, on a school," and the manager said, "Well, I can't give you them for the interests of Crane Company". Crane did not sell him.

Cross-examination.

Witness a member of the union, and a member during the period heretofore testified. Witness was told by the secretary of the union to go over and see Lettisch and thereafter Lettisch took witness with him on these various trips testified to. There was a strike at that time.

EDWARD G. SCHROEDER, witness for the people testified as follows:

Residence, 411 Seventh Avenue; knows Antone Lettisch, the complaining witness for 16 years, but not very personally and accompanied Lettisch to some plumbing supply houses on June 20, 1922, where they visited Dalziell's on Mission Street, San Francisco, where Lettisch went into the shipping clerk to ask him if he had some elbows, to which the shipping clerk replied he did but that Lettisch had better go to the office before he could get the elbows. Lettisch went to see Dalziell who said, "Well, the shipping clerk told you he didn't have them, didn't he." Lettisch did not get the elbows—the elbows are plumbers' supplies.

Lettisch was not able to buy anything from Dalziel, Moller Company. Witness and Lettisch went to Haines, Jones & Cadbury Company on Fulton Street, San Francisco, where Lettisch saw the shipping clerk and tried to get some valves, $\frac{1}{2}$ " angle valves, which are plumbers' supplies, whereupon shipping clerk told Lettisch that

[fol. 284] he would have to go to the office first to see if he could let Lettisch have them. Clerk came back and told Lettisch that it was against the rules to sell him, and Lettisch did not get them. This happened on June 20. Witness and Lettisch then went to Lally Company on Second Street, San Francisco, and tried to buy some fittings—some elbows, plumbing supplies, and shipping clerk went to the office and came back; told Lettisch he could not sell him. Lettisch did not get anything from the Mark-Lally Company. Witness and Lettisch then went to the California Steam where Lettisch tried to buy some elbows where the manager refused to sell Lettisch. Witness does not remember the name of the manager. Manager showed them over the establishment but refused to sell any supplies though Lettisch asked him to. Manager said he was short of material.

Cross-examination:

Secretary of the union asked the witness to take a ride with Mr. Lettisch. Witness did not know for what purpose. Mr. Metzel is the secretary of the plumbers union, who asked him to go—said union being on a strike at that time. Witness was with the secretary of the Building Trades Temple when requested to accompany Mr. Lettisch. Lettisch told the witness that he wanted the goods to complete a job.

EDWARD C. FROESCHEL, witness for the People, testified as follows:

Residence, 247 London Street; occupation, journeyman plumber and engaged in such during 1922 and knows Antone Lettisch; has known him for about a year. Accompanied Lettisch in the month of June, 1922, to several plumbing supply houses, among them being Crane Company at 2d and Bryant, at San Francisco. There Lettisch made out an order for plumbing supplies but was referred to the office where a man at a desk was interviewed who just looked [fol. 285] at witness and Lettisch and smiled. Lettisch gave the order first to the shipping clerk who told Lettisch he would have to go to the office. Order was signed and filled out on a blank form of Crane Company, at its place of business in the presence of the clerk. Lettisch received no goods or obtained no goods from Crane Company. Crane Company had the material as the shipping clerk said so.

In June, 1922, witness with Lettisch went to the California Steam Plumbing Supply Company where they saw the shipping clerk—name unknown to witness—who referred Lettisch to the office. The company had some of the material but Lettisch did not get any; same thing happened there as at Crane Company's place. The man was the manager of the Sales Department.

Witness and Lettisch visited the Dalziel Plumbing Company in said month of June, called the Dalziel-Moller Company, which is on Mission St., between 1st and 2d, San Francisco, where the shipping clerk got the fittings after the order had been placed with him by Lettisch and then referred Lettisch to the office. The clerk then

took the fittings out of the bag and put them in the bin again. Lettisch came out from the manager's office and said, "There is nothing doing," to the witness. Lettisch obtained nothing from Dalziel-Moller Company. Thought he went there for plumbing supplies. Witness is a member of Local No. 442, and was during the time testified to. Went with Lettisch at the direction of the business agent, that is, the secretary of the union. Witness was not interested in Lettisch's business.

CHARLES W. HIGGINS, witness for the People, testified as follows:

Residence, 1306 Shrader Street, San Francisco; a plumbing contractor, whose place of business is 730 Tehama, San Francisco, and has been for the last 16 years. He knows D. H. Gulick connected [fol. 286] with the Mott Company, Mission Street, San Francisco. In July, 1922, went to Mott & Company to buy plumbing supplies from D. H. Gulick; bath tubs and fixtures were wanted for use in the construction of the building for which witness had a contract, the building being on the southwest corner of Washington and Cherry Streets, San Francisco. Witness first went in to see Gulick, who got him to place an order for the material and was told by Gulick that he could have it, but on the next visit Gulick told him that he (Higgins) would have to see the Industrial Relations Committee. Gulick said that he would see the Committee for him but when witness returned to get the goods he was refused and witness did not get any of the materials on that visit or either of the two previous ones. Had purchased materials before from said company and no order had been refused.

Cross-examination:

During that period when witness's name was on the list, witness was running a union or closed shop, at which time there was a strike on in San Francisco of the plumbers.

B. SUGARMAN, witness for the People, testified as follows:

Residence, 190 Eighth Street; occupation, plumbing contractor, and has been for two years in San Francisco. During June, 1922, he went to M. Stulsaft & Company, 647 Mission Street, San Francisco, to purchase plumbing supplies, where he went several times. Miss Rose Stulsaft was there and witness asked for some plumbing material; was the secretary of the company. She told the witness that she was sorry she couldn't fill the order for the reason that the witness was not right. Witness had done business there before and gotten materials asked for. He desired the materials in June, 1922, to finish some plumbing work he had in San Francisco. Stipulated that Miss Stulsaft was acting under authority. Witness did not ask [fol. 287] anyone else besides her for any material. He was refused twice.

The name of the witness, E. Sugarman, appears on People's Exhibits Nos. 22, 23, 24 and 25, also People's Exhibit No. 11, dated October 5, 1921. In October, 1921, at the date of letter, he had a non-union man in his employment. Went to Mott & Company to purchase supplies in June, 1922, or thereabouts, where a lady waited on witness to whom he stated the purpose of his visit, which was to buy some bath tubs. She asked the witness who they were for and was told. She then asked witness if he was American Plan and witness told her he was not and she said she couldn't sell him the bath tubs. Witness wanted those tubs in connection with work as plumbing contractor in San Francisco. He obtained no tub. Did not go again to purchase anything up to December 12, 1922.

Visited in July, 1922, the Great Western Supply Company on Howard Street, San Francisco, where he saw one of the salesmen, whom he asked if the company would sell him some cast soil pipe. The salesmen wanted to know who it was for and when witness told him it was for himself and that he was running union plan the salesman told him he could not sell him. Witness had not dealt with the company before that time and did not go back. Needed those for jobs on hand in San Francisco.

Cross-examination:

During that period there was a plumbers' strike in San Francisco, and witness was operating closed shop plan but was not before the strike, as he employed both union and non-union men but when the strike was called he adopted the closed shop plan to the exclusion of every non-union man. Had a contract with the Stulsaft Company and got all of the material under the contract he was entitled to.

When he visited Mott & Company he was told by them that they were operating under the American Plan.

[fol. 288] Redirect examination:

Witness does not know whether or not the dealer operates upon American Plan. Witness, during the period testified to, was not a member of the Builders' Exchange of San Francisco.

Recross-examination:

Mott & Company asked him if he was operating under the American Plan.

JOHN HOUGHEY, witness for the People, testified as follows:

Residence, 1272 Market Street; occupation, Plumber, for the last 16 years in San Francisco. He is president of the local organization of Plumbers' No. 442. Knows Anton Lettisch and has for 16 years. Accompanied Anton Lettisch when he desired to purchase plumbers' supplies from certain supply houses. These visits made in April, 1922. One place visited was the Mueller Company, where Lettisch

asked for some six half inch angle valves, nickle plated,—used in water closet tanks, basins and bath tubs. Plumbers' supplies they are and a Mr. Leary told Lettisch when he asked for the supplies that he (Leary) "can't let you have them." Lettisch asked him why and Leary said "This is an American Plan house, and we can't let you have them." Leary refused to sell Lettisch. Lettisch then went to Geo. H. Tay Company in San Francisco, where Lettisch asked them for some fittings. The man at the counter patted Lettisch on the shoulder and said "I can't let you have them." Lettisch inquired why; the clerk replied, "You know." Lettisch and witness then went to Crane Company where Lettisch asked for fittings of the stock clerk, who telephoned the order upstairs and then notified Lettisch he couldn't have them, and told Lettisch to ask for them at the office. Lettisch and witness went to the office where they refused to let him have them. Witness and Lettisch then went to [fol. 289] Holbrook, Merrill & Stetson to get some galvanized street ells which are plumbers' supplies. Clerk advised Lettisch to see a Mr. Eastwood, which he did and Lettisch was told in witness's presence he could not have any fittings. "From instructions we have received." Lettisch produced money to pay for them but was refused the sale. Witness and Lettisch then went to the R. W. Kinney Company in San Francisco, where Lettisch told the clerk he wanted to buy 50— $\frac{3}{4}$ street ells, which were obtained by the clerk and put on the counter, but Mr. Kinney came out of the office and told Lettisch that he could not have any material in his place, saying, "This is an American Plan house." Mr. Lettisch did not buy any materials there. All of these visits testified to were made on the same day.

Cross-examination:

Mr. Houghey is not a partner in the business of Mr. Lettisch, nor interested in his business.

OTTO ANDERSON, witness for the People, testified as follows:

Residence, 3723 Market Street, San Francisco; occupation, Plumbing contractor; place of business, 3723 Market Street; has been a contractor for 20 months last past, in association with Rowe, under name of "Anderson & Rowe." His firm is the firm referred to in People's Exhibits Nos. 22, 23, 24 and 25. Some time in 1922, visited Geo. H. Tay Company, San Francisco, to buy plumbing material of different kinds, and was told by the clerk behind the counter to go inside to see Mr. Oliphant, and get "OK" on the list, which he did, but Mr. Oliphant informed witness he had to run American Plan if he wanted any material in his house. American Plan was well known to both Oliphant and the witness. There was no further explanation of American Plan.

[fol. 290] The company had the materials in stock which witness desired to purchase. Witness had a contract with the Tay Company

for the plumbing supplies he needed and asked for and later the witness went to the same company to purchase material which he did not already have contracted with them but he failed to get the material. Saw Mr. Oliphant on that occasion who told him that his house was strictly American Plan and he could not do anything for the witness. These were materials for plumbing work on jobs in San Francisco. Only went to the Tay Company once for materials not covered by contract, because Tay Company would not furnish witness with materials for the Arcola Heating System on a job at Second Avenue and California Street, San Francisco. The witness lost the job.

Witness visited Haines, Jones and Cadbury Company for the purpose of purchasing plumbing supplies about April or May, 1922, and there saw Mr. H. C. Marsh, who was one of the defendants in this action, asking Mr. Marsh for some toilets for a job that called for the Haines, Jones toilet, and the job had already been roughed-in before the strike, but Marsh refused to sell, saying that he did not carry water on both shoulders, although he would really have liked to have sold. Marsh refused to sell because witness was running a union shop at that time—witness had a helper who was a non-union man. Witness at that time had six or eight men working, of which one was a non-union man. At the same time witness went to the Wolverine Brass Works to purchase toilet connections—packing, carried by the Wolverine people, but the clerk refused to sell him although witness said he would pay cash. The clerk looked it up and informed witness he would not sell him because he was running a union shop and was on the list, and heretofore had dealt with the Geo. H. Tay Company, and had purchased plumbing materials from [fol. 291] them for use in his business and had not, prior to this time, been refused plumbing supplies; also dealt with Haines, Jones & Cadbury before, purchasing plumbing supplies and had not been refused, likewise in the same manner with the Wolverine Brass Works. The reason given by the clerks, or representatives of the said houses, when they refused to sell him was that his name appeared upon the list as one running a union shop—no other reason was given.

Cross-examination :

There was a plumbers' strike on in San Francisco, at this time. At that time the only non-union man the witness employed was a helper who was not a journeyman plumber, which witness believed put him on the closed shop plan. Witness got materials elsewhere which were refused to him by the Tay Company.

Redirect examination :

Got the materials sometime from the Rapid Wrecking Company, Dolan, or Simon, or some place—second-hand dealers; plumbers' and steamfitters' supplies which witness needed for jobs or had listed or contracted for, he was able to get at second-hand dealers or from a friend plumber boss, or he had to curtail his business otherwise.

Recross-examination:

Those with whom he had contracts before the lists were made complied and filled the contracts.

WALTER VON PLOENNIES, witness for the People, testified as follows:

Occupation, plumber; acquainted with Antone Lettisch and with Lettisch visited M. Stulsaft somewhere in August, 1922, on Mission Street. When Lettisch asked Morris Stulsaft whether he would sell [fol. 292] goods, finishing goods, something around \$200.00 worth, lavatories, etc., Stulsaft refused. Lettisch laid money on the counter but Stulsaft refused; did not accompany Lettisch to any other supply house.

Cross-examination:

Witness is a member of the Plumbers' Local Union No. 442. Not interested in the business with Mr. Lettisch. Witness did not think there was a strike on at that time, but that there was a lockout. He was not working at that time.

S. GREEN, witness for the People, testified as follows:

Residence, 555 Clayton Street; occupation, Journeyman Plumber; employed by E. Sugarman and has been for a year and a half; visited the store of Wolverine Brass Works, to buy plumbers' supplies. Sent there by Sugarman to buy a force pump used by plumbing contractors in their business and saw one of the clerks, who got the force pump but when told by the witness to charge it to Sugarman, the clerk says, "Sugarman can't get anything, he is on the blacklist." Witness told clerk that he would buy it, but when asked by the clerk if he was in the employ of Sugarman, and witness replied he was, the clerk said "You can't have that plunger if you pay a thousand dollars for it."

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H. E. OLIPHANT, witness recalled on behalf of the People, testified:

That he did not remember of any specific conversations or discussions with any members of the Association, concerning the purpose of his trip to Los Angeles, nor to visit the N. O. Nelson Manufacturing Company, dealers in plumbers' supplies. He may have told Kuhl and others that he was going to Los Angeles. Witness made three visits to Los Angeles during the year; the one to Nelson was

[fol. 293] made in September, about the 18th or 19th, 1922; also one to Los Angeles in March, and in July, 1922. Did not discuss the purpose of his visit made in September with any other plumbing supply house in San Francisco, or their representatives, or plumbing dealers, or did not discuss with Mr. Goss about this trip. The trip by witness to Los Angeles to call on the Nelson Manufacturing Company was voluntary on his part and there was no other representative of any other supply house present when he talked to the Nelson people. Witness called on those plumbing supply houses in Los Angeles, with which he was acquainted, but there was no meeting held at which there were present members of two or more other plumbing supply houses.

ANTONE LETTISCH, witness for the People, testified as follows:

Residence, 1343 Fifteenth Avenue; occupation, plumbing and heating contractor since 1904; place of business, 365 Fell Street, San Francisco. Called on certain plumbing contractors listed in People's Exhibit No. 19, for the purpose of buying from them plumbers' supplies, as follows:

George H. Tay Company, Crane Company, Western Supply Company, Richmond Sanitary Company, P. E. O'Hair, Haines, Jones & Cadbury, H. Mueller Manufacturing Company, Mark-Lally Company, Dalziel, Moller Company, Wolverine Brass, Holbrook, Merrill & Stetson, California Steam & Plumbing Supply Company, Grinnel Company, M. Stulsaft Company, R. W. Kinney Company, Mott Company. Called first on the H. Mueller Manufacturing Company in San Francisco, April 28, 1922, and saw Mr. Leary, the manager, to purchase same slip joint angle valves, specified for the Parkside school, which are plumbing supplies and needed on that contract; contract from the City and County of San Francisco for said school. [fol. 294] Witness first spoke to the clerk at the counter and Leary who was there stated to witness as follows: "This is a strictly American Plan house we are running on the American Plan."

Witness told Leary he was willing to pay for them and produced the money, but Leary refused to take it and refused to sell. Jack Houghy was present on that occasion. Visited Crane Company in San Francisco, to purchase slip joint angle valves—plumbing supplies—needed by witness as plumbing contractor on a contract where he intended to use them. Said contracts were at 17th and Potrero Avenue, the Detling Apartments and the Del Monte Creamery, also a job at Golden Gate Avenue and Larkin—the White Lunch Company. Wanted those supplies for one of these jobs. Appeared Mr. Olson, the clerk, told him what he wanted. The clerk wrote up the order, went to the office of Crane Company, but Mr. Weeks, the clerk came out of the office and inquired of witness if it was new business and was told "Yes." The clerk said witness could not get the supplies. Witness and Houghy went to the office and witness inquired of the Assistant Manager Morton, the reason for the refusal telling

Morton he had the money to pay for it and produced the money but was refused. Later witness returned to Crane Company, on May 2, to buy some 2½" gate valves specified for the Parkside school, which are plumbers' supplies, gave the order to Mr. Olson for valves called 4-40 gate valves, which were in the specifications for that school. Mr. Olson wrote up the order and Mr. Weld of the company, informed witness he could not have them—for the good of Crane Company. Mr. Houghey was present at that time. Mr. C. W. Weld is the manager of Crane Company. Later witness made another visit to Crane Company to buy some galvanized fittings, plumbers' supplies, which he needed in his business, and for the Parkside School. Witness was refused the fittings. Later witness telephoned to Mr. [fol. 295] Dunn, one of the clerks of Crane Company, concerning fittings specified for the Yerba Buena School, a public school, which were specified by the City Architect to be used for that school, but Mr. Dunn refused, saying that he still had orders not to take any new business.

June 30, witness mailed a registered letter to Crane Company, asking for certain fittings, but got no reply. Letter mailed on the 30th of June, 1922. The telephone mentioned was in June, 1922. After the letter was written witness telephoned Mr. Dunn in reference to some material for the Del Monte Apartments. The material was plumbing supplies. This quotation was in March, 1922. Witness telephoned to know if he could have the supplies for sometime in August. Mr. Dunn said that he could not have them as he considered that new business. Mr. Houghey accompanied witness. Called on R. W. Kinney Company, April 28, 1922, to purchase plumbing supplies for use on the job he was working on and saw one of the clerks, ordered the fittings, put them in a sack and Mr. Kinney came out of the office, told witness he could not purchase the fittings. Witness told him that he was being held up around town and had to have the fittings, but Kinney still refused, though the witness told him he would pay for them in money. Did not go back again to the Kinney Company.

Visited Mark-Lally Company about the middle of May, 1922; gave clerk an order for ¾ ells, plumbing supplies, to be used on a plumbing contract witness had, but clerk took order to the office and came back saying that he could not sell. Someone witnessed, but he does not remember who.

Visited the Wolverine Brass Works on May 16, 1922. No one accompanied him; went there to purchase some 1½" nickle plated P traps, plumbers' supplies, to be used on a contract on the Parkside school. Clerk got the article and placed it on the counter but then [fol. 296] told Lettisch that he could not sell him and refused to sell him. Visited Holbrook, Merrill & Stetson, about April 28, 1922, and went into the office to see Mr. Stormfield. Ordered some galvanized ells, but was informed by Mr. Stormfield he had instructions, or order not to sell. Suggested to see Mr. Burr Eastwood, whom he saw. Mr. Eastwood informed him "We have instructions, or orders not to sell you." Mr. Lettisch produced the money next,

but was refused the sale. Witness went down again for some fittings and saw Mr. Stormfield, who told him he could not sell him. Witness called up Mr. Eastwood, who advised witness he could not sell him. Did not return again to that company.

Went to Haines, Jones & Cadbury Company on or about May 15, 1922; accompanied by witness who had already testified in this case whose name he had forgotten, but was a member of Local No. 442. Asked clerk of the company if he had certain slip joint angle valves, which are plumbers' supplies needed in the performance of a plumbing contract, which the clerk said he had in stock and for which witness offered to pay money, but clerk went to the office and came back telling witness he could not sell him as he had instructions not to.

On August 24, 1922, sent a registered letter to Haines, Jones & Cadbury reading:

"August 24th, 1922.

Messrs. Haines, Jones Cadbury Co., 857 Folsom Street, San Francisco, Calif.

GENTLEMEN: I wish to purchase from Haines, Jones Cadbury Company 13 Bennett Wall Closet Fittings, 7 R. H. and 6 L. H. These fittings are specified for the new addition to the Yerba Buena School, San Francisco. I am willing and offer to pay you cash at your store 857 Folsom Street for this material. Trusting to hear from you, as I will need these fittings for the rough installation on the above mentioned school building in the next few days.

Yours truly." (Unsigned.)

[fol. 297] and received from Haines, Jones & Cadbury Company, reply, which are People's Exhibit No. 31, reading as follows:

Haines, Jones & Cadbury Co.

San Francisco, August 26th, 1922.

In reply refer to No. HCM82606HM.

A. Lettich, 365 Fell Street, San Francisco, California.

ESTEEMED FRIEND: Replying to your favor of August 24th, in which you state that you wish to purchase from Haines, Jones & Cadbury Company, thirteen (13) Bennett Wall Closets Fittings for the Yerba Buena School, we wish to say that we do not carry this fitting nor do we manufacture this fitting.

Very respectfully, Haines, Jones & Cadbury Co. H. C. Marsh, Manager."

That within a short time after August 24, 1922, witness was down at the place of business of Haines, Jones & Cadbury, and in the back of the warehouse saw perhaps 30 or 40 fittings which were

the Bennett closet fittings, from one of which he took a tag purporting to come from the Keystone Iron & Steel Works, Los Angeles, California. The fittings from one of which this tag was taken, were the same kind of fittings which the witness ordered in his letter of August 24, 1922, part of People's Exhibit No. 31, and which the Haines, Jones & Cadbury Company wrote, in their letter of August 24, they did not have. Witness said nothing to them about it and made no request of that company for plumbers' supplies. Witness then visited on or about May 2, 1922, the Grinnell Company of the Pacific and was accompanied by a man named O'Grady; one of the witnesses that testified heretofore.

Witness went in with a list to buy some steam fittings needed in his business on a job for the Del Monte Creamery. Presented the list to Mr. McCabe, who examined his stock and said the company did not have any; that it did not have a 1/2 inch ell or tee in stock. Witness said, "Is it because I owe you a little bill?" Answered, "No." Witness had owed a little bill at that time to this company of \$108.00 or more. Witness had bought considerable material from Grinnell Company and was never refused before. Had done thirty or forty thousand dollars' worth of business with Crane Company before the time mentioned in the testimony and had never been refused before any plumbers' supplies; had not bought anything of Haines, Jones & Cadbury Company for a year or two before the date of the testimony; however, 6, 8 or 10 years ago he had been quite a customer of Haines, Jones & Cadbury. Witness had also been a customer of the Wolverine Brass Works, Holbrook, Merrill & Stetson, of R. W. Kinney Company and also Grinnell Company of the Pacific since 1906. Witness took out money to pay for the materials he wanted to buy from the Grinnell Company, but Mr. McCabe refused to accept the money and sell the goods. One of the men who had already testified accompanied witness. Did not visit the Grinnell Company after that instance.

On the same day witness also visited the M. Stulsافت Company, went to shipping clerk and gave him list of fittings that he required—plumbing fittings—steam fittings and valves, for use on a job of the witness; the clerk wrote up the order and there were quite a few fittings he was short and clerk telephoned the Grinnell Company at the suggestion of witness and covered the shorts. What he obtained from the Grinnell Company were the articles which they denied having on the visit of the witness there. Witness got what was in stock of the Stulsافت Company, then went down to Grinnell and got from Grinnell the shorts ordered by Stulsافت, which had been refused to witness by Grinnell when on his visit, on or about May 12, 1922. When witness bought some goods from Stulsافت, Mr. Morris Stulsافت told the witness that he could not take care of him any longer and witness did not receive any material that day though he attempted to buy some. Witness did not receive [fol. 299] materials on a later day that he attempted to buy from Stulsافت, which were for the Jackson school, which materials were

a bath tub, closet combination, enameled basins, boilers The order ran up to over \$1,800.00. Witness had a contract for plumbing work at that time on the Andrew Jackson school, a public school. Witness went down to see Mr. Stulsaft on the 8th, 9th, or 10th of August, and inquired if he could have the material, but was refused, Mr. Stulsaft saying that the reason was not because the witness owed anything, for he did not, but the reason given was: "You are not operating on the American Plan." Witness pulled out two one thousand dollar bills to pay, but it was refused. Witness then visited, on or about May 10th or 12th, 1922, the Great Western Supply Company on Howard Street, San Francisco, desiring to purchase some 2½ x 1 galvanized tees, plumbers' supplies, for a job that he was working on. Gave the clerk his card, asked if he had the fittings, to which the clerk replied, he did, but taking the card to desk the clerk pulled out a drawer, turned around and said to the witness that he could not sell him. Witness offered to pay for them in cash and produced the money but the clerk refused. What the clerk said witness does not remember. Witness made three or four visits to the California Steam and Plumbing Supply Company, on May 12, 1922, to purchase 2½" x 1 tees—plumbing supplies—needed by witness on a job, and obtained the fittings, and before that time also received from this Company, from Mr. Auth, some slip joint angle valves. A few days after witness again went to this company to purchase some ¾ unions, plumbers' fittings, to be used on a job. Met Mr. Auth who said, "Now don't ask me to sell you any material that is on the shelves," but also said he was short of materials—valves. A few days later witness went down again to this company and paid a bill for fittings he had purchased on May 12. Made no other visits than testified here.

Visited Mott Company of California—no one accompanied him, and left an order for some bath tubs and different fixtures that were [fol. 300] needed. Told one of the clerks the order but advised him he would have to see Gulick. Clerk said he did not know if there were any in stock. This visit was sometime in June or July, 1922. Witness called back that afternoon to see Mr. Gulick who did not return, and the next day witness received a telephone call from the Mott Company saying on account of the Eastern strike and shortage of material they could not fill the order—that they did not have it in stock. Witness did not obtain the materials from Mott & Company, but did get them from Sacramento where another party bought them for the witness. Witness, sometime in June, 1922, visited Richmond Sanitary Company, to buy some soil pipe and fittings. Handed the list to the clerk who said that they were all out so witness left and as he was leaving met Mr. Euphrat, manager of the concern. Told Mr. Euphrat what supplies he wanted and Mr. Euphrat replied "No, we don't care for your account." "We had enough trouble with you or had difficulty back in 1916 and you didn't pay your bill or didn't pay a balance." Witness said Mr. Euphrat was mistaken, declares he owed no balance to the Richmond Sanitary Company. The dispute

over the balance was on account of credits. Was never sued by the company; did not make any visits to this company after that.

Witness went to P. E. O'Hair & Company, from whom he was buying up until late in June, 1922, to buy some plumbing supplies, when Mr. O'Hair told witness things were then rather hot; that he had been on the carpet and did not care to have witness call personally and get material. Witness wanted some 20 x 24 white enamel sinks for a job he was doing but did not get the order and as he left the place Mr. Neal O'Hair said, "Telephone your orders in." Mr. Neal O'Hair is one of the members of the firm of P. E. O'Hair & Company. Witness did not telephone his order, but sent one of his men down, whose name is Thomas Gainford. He got the materials desired on the first visit, but was refused the materials on [fol. 301] the second. Witness called an Dalziel Moeller Company somewhere around May or June, 1922, and went to a clerk at the counter, gave him an order for galvanized ells, or street ells, plumbers' supplies; clerk went over to the bin to fill the order, another clerk came up and after conversing with the first clerk, the first clerk came back and told witness to go into the office where witness went and met one of the Dalziells, told him what he desired to purchase and was told, "We haven't any for sale." Witness said, "You mean to say you won't sell me, or let me have them." Answer: "You can draw your own conclusions." "Both sides are acting like kids." "Why don't you straighten it out?" Witness left the place without making the purchase.

Witness visited Geo. H. Tay Company on April 28, 1922, and was accompanied by one of the witnesses heretofore testified; ordered some fittings off a clerk who told witness he had instructions not to sell him. Witness did not get any supplies at that time. Did not have any business dealings with the N. O. Nelson Manufacturing Company, Los Angeles, but some persons for witness bought some supplies from that company, about 20 fittings, which witness had tried to purchase from Crane and from Haines, Jones, & Cadbury for the Yerba Buena School.

Local #442, Plumbers' Union, sent a man named Wanderlich to Los Angeles, to purchase the fittings. This was about July 7 or 8, 1922. During that period he made these various visits to the supply houses, witness had contracts for public school work in San Francisco, in 1922, amounting to about five thousand dollars. Contracts received by witness were for drill tower of San Francisco Fire Department, in March; Horace Mann school in April; Yerba Buena school in June, Jackson in June of 1922; Columbus school, December, 1921; Parkside school in April, 1921; the Oriental school [fol. 302] in April, 1922. Witness bought about twelve hundred dollars' — material from C. Peterson Company, a plumbing contractor of San Francisco, also some material from Band, a plumbing contractor on Valencia Street, and also about fifteen hundred dollars' worth of material from two plumbers out in the outlying districts. The C. Peterson Company is the company whose name appears on the lists marked "People's Exhibit- 22, 23, 24 and 25,"

also Mr. S. W. Van purchased the balance of supplies necessary for the Yerba Buena school, in Sacramento. At the time went to the Mark Lally Company to purchase materials heretofore testified to, he did not owe that company any money.

After being refused by the San Francisco dealers plumbing supplies testified to, received material from Los Angeles, two orders from Sacramento and from the outlying districts and also the Coast Supply Company on Howard near Second, San Francisco, where the manager suggested to witness that he have the goods billed under some other name than his own so they billed it under the name of 'Burke.'

Witness is not a member of any union and never belonged to one.

Cross-examination :

During the times testified to the witness was a Master Plumber carrying on business in San Francisco. Witness finally got his materials from the H. Mueller Manufacturing Company during the year, 1922, which were first refused him by that company, as he had a written contract with them to supply certain materials during the year 1922. Mueller & Company sold witness fittings up until a few days before May 1, 1923. Witness did not have any contract with Crane Company for the purchase of supplies during the year 1923, likewise R. W. Kinney Company and Geo. H. Tay Company, also [fol. 303] the Grinnel Company and Stulsaft Company. Witness did not have any contract with the P. E. O'Hair Company in 1922, or with the Haines, Jones & Cadbury Company, Holbrook, Merrill & Stetson, Dalziel Moeller Company, Mott Company Wolverine Brass Company, California Steam & Plumbing Supply Company, Great Western Supply Company, Richmond Sanitary Company. Witness called on these various people as he needed materials; on the 28th day of April, 1922 he called on Mueller, Haines, Jones & Cadbury Company, Tay and Kinney, and on different dates, between May and June, on the others.

A member of Local No. 442, accompanied witness on these occasions. On April 27, Mr. Wetzel came to his shop and witness told him he heard the plumbing houses were going to shut off supplies. Mr. Houghey was there at the time. Witness said he was going down that day to find out. Mr. Houghey was not connected with the business of the witness, or with any of the concerns that refused witness supplies. Mr. Houghey accompanied witness at the suggestion of Mr. Wetzel, the business agent of the local union. Witness suggested to Mr. Wetzel that he send a man over to accompany him on April 28, and witness telephoned to Mr. Wetzel several times to send a man over to the shop to accompany witness on these trips where he desired to purchase supplies.

Mr. Schroeder is not connected with the business of the witness nor with any business houses mentioned. Mr. Froeschel accompanied witness at the suggestion of the business agent of the local, and most of the others except Mr. Von Pleonnies, who witness asked himself to accompany him to Stulsaft's. Witness did not ask these

officials for the purpose of getting them to testify to what happened on the occasion of these visits.

Mr. Higgins on April 27, had told witness he had been refused materials from Holbrook, Merrill & Stetson, and that they were put-[fol. 304] ting into effect the American Plan, and witness went around to these various places to find out if he could get materials to continue his said contract and so notified the Board of Public Works, by letter. Mr. Higgins was not an associate with witness in business. Witness was awarded the plumbing contract for the Andrew Jackson school sometime in 1922, but did not have a contract prior to that time to install plumbing in this school. Andrew Jackson school ready for plumbing from August to September, 1922. Building had been in progress about 400 days before witness applied to buy any materials. Columbus school was finished along in March, 1922, and witness completed the installation of the plumbing in that building and job was accepted.

Yerba Buena school was commenced early in 1922, or in December, 1921, and not yet completed. Part of the plumbing was installed with work yet to be done. On the Horace Mann school in San Francisco, witness is working on that now (since May, 1922); witness has been working on that job for the last two or three months; He started first about four or five months ago; when he received notice from the Bureau of Architecture to install plumbing. It will take 7, 8 or 10 months to complete the installation. No one interested in the contract but the witness; he had it alone.

Adams school job was finished and accepted around August, 1922. The building was ready for the installation of plumbing during 1921. Witness carried on work with diligence until completed. Witness had contract with Mueller & Company for supplies they carry, or manufacture, for the year 1922. Witness had contract with Mueller & Company for San Francisco Fire Department which he got in 1921. Witness was the successful bidder on all these contracts, at public bidding. Fire house drill tower was ready for plumbing in May, 1921. Was notified by the Bureau to commence [fol. 305] work and did so a week or two after. Completed the work in October/November, 1922, and within time. Witness also had plumbing work to do for the Auditorium about July, 1922, but was notified by the Bureau that building was ready for installation of plumbing and witness commenced work within a reasonable time thereafter. Did not complete job in time but got an extension, and finished the job. The work on the Parkside school was completed in the time required by the contract and was carried on with diligence and dispatch.

PAUL ELIEL, a witness recalled in behalf of the people, for redirect examination. Letter of October 27, 1921, purporting to be issued from the office of the Industrial Association of San Francisco, was a circular letter signed by Frank B. Anderson, a member of the Advisory Committee of the Association, but witness states he never

saw any letter like that and had no information about it and that it was probably sent out by the membership department. The Frank B. Anderson who appears to have signed the letter is President of the Bank of California and may have been sent out by the Industrial Association, as they had several membership drives. Letter introduced in evidence as People's Exhibit No. 32, reads as follows:

"Industrial Association of San Francisco, Santa Fe Building

October 27, 1921.

GENTLEMEN: As a member of the Advisory Committee of the Industrial Association of San Francisco, I take the liberty of addressing you preliminary to a drive for membership that the Association is about to launch.

As you know, a fund of over \$1,000,000.00 was provided for the purpose of re-establishing the industrial reputation of San Francisco. A portion of this money has been called in and spent; the balance of it will be called within a year. It is the purpose of the Association to keep the balance of this money on deposit at interest in order to have on hand an emergency fund, should it be needed. As this fund is [fol. 306] the backbone of the Association, it is desired that as small a portion of this as possible, be spent for overhead expenses. It thus becomes necessary to build up a strong membership.

Your careful reading of the enclosed pamphlet, which fully covers the policies and gives you "some facts about the Industrial Association, will be appreciated. After reading the pamphlet, we would like to solicit your support to the extent of selling the Association to some of your many friends. At a later date a Committee will call upon you to answer any questions that you may have.

I wish that you would take the opportunity to write me advising that the Association will receive your support.

Sincerely yours, Frank B. Anderson, Member of Advisory Committee. For Sound Industrial Relations."

In the left-hand margin of the said letter appears the following:

"Advisory Committee: McBean, Atholl, President Industrial Association of San Francisco; Secretary Gladding, McBean & Company; Alexander, Wallace M., President Alexander & Baldwin; Coldwell, Colbert, President Coldwell, Cornwall & Banker; Creed, W. E., President Pacific Gas & Electric Company; Drake, F. B., President-Manager Johnson Gear Co.; Esberg, A. I., Real Estate; Fleischbacker, Mortimer, President Anglo-California Trust Company; Gompertz, Charles W., Builder, Mills Building; Hanna, R. J., Vice-President Standard Oil Company; Koster, F. J., Chairman of Board, California Bbl. Co.; Levison, J. B., President Firemen's Fund Insurance Co.; Levy, Leon G., Levy, Jules & Brothers; McNear, Seward B., General Manager Sperry Flour Company; Moore, Walton N., President Walton N. Moore Dry Goods Co.; Shoup, Paul, Vice-President Southern Pacific Co.; Standish, Miles Timberlands, Crocker Building."

List dated November 8, 1922, exhibit No. 30, is the last list sent out by the Industrial Association, and prior to sending out of that list there was no meeting held between the plumbing supplies dealers and the Industrial Association, regarding discontinuance of such lists.

Recross-examination:

There are about 11,000 members in the Industrial Association.

[fol. 307] L. E. CRAWFORD, recalled on behalf of the people.

Redirect examination:

PEOPLE'S EXHIBIT NO. 33—a letter dated December 2, 1922, and purporting to have been sent out by the Industrial Relations Committee of the Builders' Exchange, reads as follows:

"The Builders' Exchange, Incorporated July 5, 1890. 180-186 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., December 2nd, 1922.

Mr. J. L. Costa, 1041 Filbert St., San Francisco, California.

DEAR SIR: In order to maintain the American Plan in the Plumbing Craft in San Francisco this Department has adopted the practice of ascertaining before issuing permits for Foundation Materials, the name of the Plumber who is to do the job. We have accordingly this date issued a permit for two (2) Flats at N. S. Union 55 feet east of Gough, Mr. Firpo, Owner; M. Perino, Contractor; with the understanding that you are to do the plumbing. If under any circumstances you have not been awarded the work mentioned above, please call the matter to the attention of this office immediately.

Yours very truly, W. H. George, Chairman Industrial Relations Committee. L. E. C.: M. C."

J. L. Costa mentioned in said letter, is a plumbing contractor. Similar letters were sent to the contractors awarded plumbing jobs and reported by applicants for building materials. Prior to November 8, 1922, the said form letters were being sent out to each plumbing contractor reported as having been awarded a job, the purpose being "to notify the plumbing contractor that the owner, or the contractor had awarded him the job, and we held him accountable that the work would be run on the American Plan."

After any report was made and that report was found true, that a general contractor had employed a plumbing contractor who was not [fol. 308] conducting his business in accordance with the plan of the Builders' Exchange (was not running that job on the American Plan) the witness refused permits for cement, lime, plaster, ready mixed mortar, common brick, fire brick, etc., to that general con-

tractor. Stipulated that certain exhibits introduced at the Police Court hearing be adduced in evidence. (No number given.)

Recross-examination :

This permit system did not cover plumbing supplies.

Redirect examination :

If reports showed that a general contractor did not employ a plumber who was following the Builders' Exchange or American Plan, the witness would not issue to such general contractor a permit for materials such as plaster, brick, cement, etc. People's Exhibit No. 34 consisting of eleven (11) "Daily Report of Shops and of Jobs Operating," reading as follows:

PEOPLE'S EXHIBIT No. 34

"P. U. #2. Daily Report of Shops and of Jobs Operating. (Report each craft, and common laborers separately.) Contractor, Campbell. Craft, Plumbing. Location of Shop, Job, 202 University St. Wages, —. Signs Put Up (Yes or No)? —. No. Non-Union Men, 2. Wages, \$—. Foreman's Name, ———. Union or Non-Union Job, —. Remarks: Think Campbell is running O. K. Date, 7/14/22. (Signed) Murphy."

Daily Report of Shops and of Jobs Operating. (Report each craft, and common laborers, operating.) Contractor, G. Wienholtz. Craft, Plumber. Location of Job, 14th Ave. & C. No. Union Men, 1. Signs put up (Yes or No)? —. No. Non-Union Men, 1 helper. Foreman's name, ———. Union or Non-Union Job, —. Remarks, —. Date, April 21, 1922. (Signed) W. R. Rhoten."

"3 Special. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, Sugarman. Craft, Plumbers' Hlpr. Location of Job, N. R. cor. 3d Irving. No. Union Men, 1. Wages, \$6.00. Signs put Up (Yes or No)? —. No. Non-Union Men, —. Wages, —. Foreman's Name, ———. Union or Non-Union Job, —. Remarks, Roughing in Plumbing. Date, 7-13-22. (Signed) E. V. Lee.

"3 Special. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, Gus [fol. 309] May. Craft, Plumbers. Location of Job, S./S. Anza East. No. Union Men, 2. Wages \$9.00. Signs put up? (Yes or No) of 22d. No. Non-Union Men, —. Wages, —. Foreman's Name, ———. Union or Non-Union Job, —. Remarks: Roughing in of plumbing about 25% completed. Date, 7/13/22. (Signed) E. V. Lee.

"3 Special. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, Sugarman. Craft, Plumbers' Hlpr. Location of Job, 21st Ave. 150' No. of Clement. No. Union Men, 1. Wages, \$6.00. Signs put up (Yes or No)? —. No. Non-Union Men. —. Wages, —.

Foreman's Name, ———. Union or Non-Union Job, —. Remarks, —. Date, 7-12-22. (Signed) E. V. Lee."

"3 P. U. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, B. C. Peasley. Craft, Plumbers. Location of Job, Ashbury & Fulton. No. Union Men, —. Wages, —. Signs put up (Yes or No)? —. No. Non-Union Men, 5. Wages, \$9.00. Foreman's Name, ———. Union or Non-Union Job, —. Remarks, —. Date, 6-22-22. (Signed) E. V. Lee."

"5/12 3 P. U. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, Scott Co. Craft, Plumbers. Location of Job, N./E. Cor. 22d and Irving. No. Union Men, —. Wages, —. Signed put up (Yes or No)? —. No. Non-Union Men, 4. Wages, \$9.00. Foreman's Name, ———. Union or Non-Union Job, —. Remarks, —. Date, 6-22-22. (Signed) E. V. Lee."

"P. U. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, Gilly & Schmid Co. Craft, Steamfitters. Location of Shop, Job, 857 Ellis. No. Union Men, —. Signs put up (Yes or No)? —. No. Non-Union Men, 3. Wages, -9.00. Union or Non-Union Job, —. Remarks, —. Date, May, 16. (Signed) A. Hutchinson."

"P. U. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, Monahan & Slavin. Craft, Plumbers. Location of Shop, Job, Geary & Hyde. No. Union Men, —. Wages, —. Signs Put Up (Yes or No)? —. No. Non-Union Men, 6. Wages, \$9.00. Foreman's Name, ———. Union or Non-Union Job, —. Remarks, —. Date, June 15. (Signed) Hutch."

[fol. 310] "3 P. U. 7/6. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, Scott Co. Craft, Plumbers. Location of Job, W./S. 23d nr. Fulton. No. Union Men, —. Wages, \$—. Signs put up (Yes or No)? —. No. Non-Union Men, 3. Wages, \$9.00. Foreman's Name, ———. Union or Non-Union Job, —. Remarks, —. Date, 7-13-22. (Signed) E. V. Lee."

"3 P. U. Daily Report of Shops and of Jobs Operating. (Report each craft and common laborers separately.) Contractor, A. C. Rondoni. Craft, Plumbers. Location of Job, N./E. Cor. 26th & Clement. No. Union Men, —. Wages, —. Signs put up (Yes or No)? —. No. Non-Union Men, 2. Wages, \$—. Foreman's Name, ———. Union or Non-Union Job, —. Remarks, Rondoni is working on this job. Date, 7-20-22. (Signed) E. V. Lee."

S. A. D. SCHENCK, People's witness, recalled.

Redirect examination:

Witness has a directory of the Builders' Exchange. Witness exhibited a directory of the Builders' Exchange and stated that on the

frontispape, the men, with some changes, held the offices as designated on said page. In 1922, Messrs. George, Sullivan, Kennan, Bowen, Forbes, Mennie, and Gompertz held their respective positions as shown, also C. G. Burge, J. A. Hart, J. D. McGilvray and Thomas Campbell held these positions in 1922.

The following read into the record:

PEOPLE'S EXHIBIT No. 35

"Builders' Exchange, San Francisco, California. Board of Directors: W. H. George, President; D. J. Sullivan, First Vice-President; Jos. B. Keenan, Second Vice-President; Geo. T. Bowen, Third Vice-President; R. J. Forbes, Secretary; Alex. Mennie, Treasurer; Chas. W. Gompertz, Director; C. G. Berg, Director; J. A. Hart, Director; J. D. McGilvray, Director; Thos. Campbell, Director.

Board of Directors' Committees

On Finance.—Joseph B. Keenan, Chairman; D. J. Sullivan, R. J. H. Forbes.

On Rooms.—George T. Bowen, Chairman; C. G. Berg, Thomas Campbell.

On Publicity.—J. A. Hart, Chairman; Frank C. Herrick, Clarence Pratt.

On Entertainment.—Jos. B. Keenan, Chairman; D. B. Farquharson, C. Holloway, Jr.

On Grievance.—James H. Pinkerton, Chairman; Joseph B. Keenan, Thomas Campbell, Geo. R. Perkins, R. B. Cleghorn.

On Membership.—Alex Mennie, D. J. Sullivan, C. G. Berg.

Auxiliary Committee on Membership.—L. J. Neal, E. S. Rainey, Charles M. Cadman.

[fol. 311]

Central Council Committees

On Intercraft Relations.—D. B. Farquharson, Chairman, A. Heyman, D. J. Sullivan, Geo. Wagner, Thomas Campbell.

On Rules and By-Laws.—Chas. W. Gompertz, Chairman; C. E. Rhinehart, D. J. Sullivan, R. J. H. Forbes, Jas. H. Pinkerton.

On Safety.—J. A. Hart, Chairman; R. G. Guyett, Thos. J. Bennett, Geo. T. Bowen, J. D. McGilvray.

On Public Affairs.—Chas. W. Gompertz, Chairman; R. J. H. Forbes, Geo. R. Chambers, Frank Mordecai, J. D. McGilvray.

On Legislation.—D. J. Sullivan, Chairman; Alex Mennie, J. A. Hart, D. B. Farquharson, Wm. Chatham.

On Industrial Relations.—W. H. George, Chairman; D. B. Farguharson, Geo. T. Bowen, Geo. Wagner, A. Heyman.

Sergeant at Arms.—Walter Jamison."

All of those whose names are under the title of Central Council Committee were members of the Central Council Committee of the Builders' Exchange in 1922.

Names of the dealers in brick and clay products who were members of the Builders' Exchange during the year 1922, and who are now, and as taken from the directory or records are as follows, for the year 1922:

California Brick Company, 604 Mission St.;
 California Pottery Company, Mills Building;
 Cannon & Company, Sacramento, Cal., Box 281;
 N. Clark & Sons, 116 Natoma Street;
 Gladding, McBean & Company, Crocker Building;
 McNear Brick Company, 946 Monadnock Building;
 Nephi Plaster Manufacturing Company, 2 Pine Street;
 Peterson Kartschoks Brick Company, San Jose, Cal.;
 Port Costa Brick Works, Sharon Building;
 Remillard Brick Company, 332 Phelan Building;
 Sacramento Brick Company, Pier 54;
 San Jose Brick Company, 2 Pine Street;
 O. W. Stoner, 604 Mission Street;
 Stockton Fire Brick Company, Rialto Building;
 United Materials Company, Sharon Building;
 Western Lime & Cement Company, 2 Pine Street;

Also the Hidecker Brick Company and the Civic Center Supply Company.

Names of dealers in cement, lime and plaster, as taken from the directory and members of the Industrial Association for the year 1922, are as follows:

Atlas Mortar Company, 58 Sutter Street;
 Bode Gravel Company, 2401 San Jose Avenue;
 John Cassaretto, 345 Berry Street;
 H. E. Casey Company, Coleman Building, San Mateo;
 Henry Cowell Lime & Cement Company, 2 Market Street;
 Eclipse Lime & Cement Company, 135 Landers Street;
 J. S. Guerin & Company, 720 Folsom Street;
 E. E. Gillon, 3944 Geary Street;
 [fol. 312] Felix Gross Company, 480 Ninth Street;
 Holmes Lime & Cement Company, 2 Pine Street;
 J. P. Holland, 540 Brannan Street;
 Howes Lumber Company Incorporated, 1005 Railroad Ave.;
 J. E. Lennon Lime & Cement Company, 352 Church;
 Nephi Plaster & Manufacturing Company, 2 Pine Street;
 Pacific Gravel Company, 451 Shotwell Street;
 Pacific Lime & Plaster Company, 58 Sutter Street;
 Pacific Material Company, 525 Market Street;
 Pacific Portland Cement Company, Pacific Building;
 C. Russell, 180 Jessie Street;
 Santa Cruz Portland Cement Company, 324 Crocker Bldg.;

Spring Valley Lumber Yard, 2401 San Jose Avenue;
 Tacoma & Roche Harbor Lime Company, 180 Jessie Street;
 Western Lime & Cement Company, 2 Pine Street;
 Wisnom Lumber Company, San Mateo;
 United Materials Company, Sharon Building;
 United States Gypsum Company, 180 Jessie Street;
 Monolith Portland Cement Company."

The list of members of the Exchange who deal in Fire Brick Dust and Fire Clay for 1922, are as follows:

"California Brick Company, 604 Mission Street;
 N. Clark & Sons, 116 Natoma;
 Gladding, McBean & Company, Crocker Building;
 Stockton Fire Brick Company, Rialto Building;
 United Materials Company, Sharon Building;"

List of dealers in Mortar, Brick and Plaster, for 1922, are as follows:

"Atlas Mortar Company, 58 Sutter Street.
 Jas. B. Lennon Lime & Cement Company, 352 Church St."

List of dealers in pipe fittings, valves, steam and plumbing specialties, members of the Builders' Exchange during 1922, from the directory of the Builders' Exchange, is as follows:

"California Steam & Plumbing Supply Company, 671-79 5th Street;

Coast Supply Company, 590 Howard Street;
 Crane Company, 301 Brannan Street;
 Grinnell Company of the Pacific, 453 Mission Street;
 Holbrook, Merrill & Stetson, 665 6th Street;
 Kennedy Valve Manufacturing Company, 23 Minna Street;
 Kortick Manufacturing Company, 353 1st Street;
 Oscar Krenz Copper & Brass Works, 612 Bryant;
 James I. Krueger, 557-59 Pacific Building;
 Mark-Lally Company, 235 2nd Street;
 P. E. O'Hair, 857 Mission Street;
 P. H. Reardon, 57 1st Street;
 Republic Supply Company, 2d and Bryant Streets;
 Richmond Sanitary Manufacturing Company, 439-43 2nd St.;
 Simon Brothers, 148-54 Townsend Street;
 Stulsaft Company, Incorporated, 647 Mission Street;
 George H. Tay Company, 599 Mission Street;
 E. C. Whalen, Monadnock Building."

[fol. 313] List of dealers in plumbing materials, in Builders' Exchange Directory, for 1922, is as follows:

"California Steam & Plumbing Supply Company, 671 to 79 5th Street;
 Coast Supply Company, 590 Howard Street;

Crane Company, 301 Brannon Street;
 F. E. Doupnik, 149 New Montgomery Street;
 F. A. Hamilton, 101 Rialto Building;
 Haines, Jones & Cadbury Company, 857 to 59 Folsom Street;
 Emile Heymans, 822 Monadnock Building;
 Holbrook, Merrill & Stetson, 665 6th Street;
 R. W. Kinney Company, 586 Howard Street;
 Kohler Company, 571 Mission Street;
 Thomas Maddock Sons Company, 180 Jessie Street;
 Mark-Lally Company, 235 2nd Street;
 Mueller Manufacturing Company, 635 Mission Street;
 Mott Company of California, 553 Mission Street;
 N. O. Nelson Manufacturing Company, 724 Terminal, Los Angeles;
 P. E. O'Hair & Company, 857 Mission Street;
 Pacific Sanitary Manufacturing Company, 67 New Montgomery Street;
 Richmond Sanitary Manufacturing Company, 439 to 43 2nd Street;
 Simon Brothers, 148 to 54 Townsend Street;
 Standard Sanitary Manufacturing Company, 149 to 55 Bluxome Street;
 Stulsaft Company, Incorporated, 647 Mission Street;
 George H. Tay Company, 599 Mission Street;
 Trenton Potteries Company, Monadnock Building."

Dealers in Rock, Sand & Gravel, from said directory, members of the Builders' Exchange, for 1922, are as follows:

"Henry Albach, 627 Lincoln Way;
 Bay Development Company, Pier 54;
 Blake Brothers Company, 207 Balboa Building;
 Bode Gravel Company, 2401 San Jose Avenue;
 California Building Material Company, 500 Call Bldg.;
 H. E. Casey Company, Coleman Building, San Mateo;
 John Cassaretto, 345 Berry Street;
 Eclipse Lime & Cement Company, 135 Landers Street;
 E. E. Gillon, 3944 Geary Street;
 H. N. Gray, 180 Jessie Street;
 J. S. Guerin & Company, 720 Folsom Street;
 J. P. Holland, 540 Brannan Street;
 J. E. Lennon Lime & Cement Company, 352 Church Street;
 Mission Quarry Company, 210 Balboa Building;
 Niles Sand, Gravel & Rock Company, 704 Market Street;
 Pacific Gravel Company, 451 Shotwell Street;
 Pratt Building Material Company, 518 Hearst Bldg.;
 E. B. & A. L. Stone Company, 804 Claus Spreckles Bldg.;
 Western Lime & Cement Company, 2 Pine Street;
 Wisnom Lime Company, San Mateo, California."

Dealers in terra cotta, from said directory, members of the Builders' Exchange, for 1922, is as follows:

"California Brick Company, 604 Mission Street;
 N. Clark & Sons Company, 116 Natoma Street;
 Gladding, McBean & Company, Bocker Building;
 [fol. 314] O. W. Stoner, 604 Mission Street."

List of dealers in wall board, from said directory, members of the Builders' Exchange, for 1922, is as follows:

"J. S. Guerin & Company, 720 Folsom Street;
 Key-Hold Lath Company, 148 Hooper Street;
 J. H. Kruse, 23rd and Shotwell Streets;
 Pacific Materials Company, 525 Market Street;
 Paraffine Companies, Incorporated, 34 First Street;
 United States Gypsum Company, 180 Jessie St.;
 Waterhouse-Wilcox Company, 523 Market Street;
 Western Buildings' Supply Company, 135 Second Street."

The aforesaid lists read into the records, shall be known as People's Exhibit No. 35.

During 1922, the members of the Grievance Committee of the Builders' Exchange were—

Marion D. Cohn,
 Thomas Campbell,
 George R. Perkins, and one other.

Volume 8

Date: May 2, 1923.

JAMES H. PINKERTON, witness for the People, testified as follows:

Residence, 2266 Fulton Street; occupation, plumbing and heating contractor. Member of the Grievance Committee of the Builders' Exchange, during the year 1922. S. W. Band was charged by the Grievance Committee with violating the rules of the Builders' Exchange, and the particular rule which had been adopted by the Builders' Exchange by unanimous vote, to work on the American Plan. He violated that rule by hiring only union men. Mr. Band was expelled from the Builders' Exchange for violating said rule and fined.

C. Peterson Company was found guilty of the same offence. Mr. Peterson was suspended from the Builders' Exchange and fined.

C. W. Higgins was found guilty of violating the same rule of the [fol. 315] Builders' Exchange that members should work on the American Plan and for said violation of that rule he was suspended and fined; likewise N. Geo. Weinholz, for the same offense.

Messrs. Anerson and Ringrose were suspended, but not for that offense.

S. W. Band, C. Peterson Company, C. W. Higgins and N. Geo. Weinholz were suspended until they had met their obligation.

John L. Clymer was manager of the Exchange during this period.

P. B. Cleghorn and J. R. Perkins were members of the Grievance Committee of the Builders' Exchange during this period. The People's Exhibit No. 36 concerning charges against S. W. Band, C. Peterson Company, C. W. Higgins, N. George Weinholz and Anseron and Ringrose are as follows:

EXHIBIT TO PINKERTON'S TESTIMONY

"The Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 20, 1922.

"To the Board of Directors, the Builders' Exchange, 180 Jessie Street, San Francisco, Cal.

GENTLEMEN: This committee has to report to you that S. W. Band, plumbing contractor, is not conforming to the orders of the Exchange, and we desire to prefer charges against him.

We respectfully request that his case be referred to the Grievance Committee for immediate trial.

Yours very truly, Builders' Exchange of San Francisco, by
Committee of Industrial Relations. W. H. George, Chairman."

[fol. 316] "The Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 21, 1922.

To the Board of Directors, the Builders' Exchange, 180 Jessie St., San Francisco, Cal.

GENTLEMEN: This Committee has to report to you that C. Peterson Co., plumbing contractors, are not conforming to the orders of the Exchange, and we desire to prefer charges against them.

We respectfully request that this case be referred to the Grievance Committee for immediate trial.

Yours very truly, Builders' Exchange of San Francisco, by
Committee on Industrial Relations. W. H. George, Chairman."

"The Builders' Exchange (Incorporated July 5, 1890), 180-188 Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 21, 1922.

Board of Directors, the Builders' Exchange, 180 Jessie Street, San Francisco, Cal.

GENTLEMEN: This Committee has to report to you that N. George Weinholz, plumbing contractor, is not conforming to the orders of the Exchange, and we desire to prefer charges against him.

[fol. 317] We respectfully request that this case be referred to the Grievance Committee for immediate trial.

Very truly yours, Builders' Exchange of San Francisco.
W. H. George, Chairman."

"The Builders' Exchange (Incorporated July 5, 1890), 180-188
Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 24, 1922.

Mr. James H. Pinkerton, Chairman Grievance Committee, Builders'
Exchange, San Francisco.

DEAR SIR: Hand you herewith communications from the Committee of Industrial Relations preferring charges against S. W. Band, C. Peterson Company, C. W. Higgins, N. George Weinholz and Anderson & Ringrose.

Very truly yours, Builders' Exchange. John L. Clymer,
General Manager. JLC/McM.

Enc."

"The Builders' Exchange (Incorporated July 5, 1890), 180-188
Jessie Street. Phone, Sutter 6700

San Francisco, Cal., April 25, 1922.

To the Board of Directors, the Builders' Exchange, 180 Jessie St.,
San Francisco, Cal.

GENTLEMEN: Please be advised that the charges preferred by the [fol. 318] Committee on Industrial Relations against S. W. Band, C. Peterson Co., C. W. Higgins and H. George Weinholtz, respectively, were, after the above named parties had been properly notified to appear, taken up by the Grievance Committee of your Exchange, the evidence presented in each case considered, and each of the above named parties were, after failure to appear, found guilty as charged.

It is the recommendation of your committee that immediate and very drastic punishment be meted out to S. W. Band, C. Peterson Company, C. W. Higgins and N. George Weinholtz.

Very truly yours, Grievance Committee of the Builders' Exchange, by James H. Pinkerton, Chairman; A. B. Cleg-horn, G. R. Perkins.

"Motion approved, these men notified they are suspended to appear before the Bd. next Friday 11 A. M. receipt demanded."

"April 28, 1922.

C. Peterson Company, 390 6th Street, San Francisco.

GENTLEMEN: You are hereby summoned to appear before the Board of Directors of the Builders' Exchange on Friday at 11.30

o'clock, May 5th, in order to show cause why you should be suspended from the Exchange.

By order of the Board of Directors.

John L. Clymer, Secretary pro Tem. JLC/McM.

"April 28, 1922.

Mr. C. W. Higgins, 1306 Schrader Street, San Francisco.

DEAR SIR: You are hereby summoned to appear before the Board of Directors of the Builders' Exchange on Friday at 11:30 o'clock, May 5th, in order to show cause why you should not be suspended from the Exchange.

[fol. 319] By order of the Board of Directors.

John L. Clymer, Secretary pro Tem. JLC/McM.

"April 28, 1922.

Mr. C. W. Higgins, 1306 Schrader Street, San Francisco.

DEAR SIR: You are hereby summoned to appear before the Board of Directors of the Builders' Exchange on Friday at 11:30 o'clock, May 5th, in order to show cause why you should not be suspended from the Exchange.

By order of the Board of Directors.

John L. Clymer, Secretary pro Tem. JLC/McM.

"April 28, 1922.

Mr. S. W. Band, 580 Valencia Street, San Francisco.

DEAR SIR: You are hereby summoned to appear before the Board of Directors of the Builders' Exchange on Friday at 11:30 o'clock, May 5th, in order to show cause why you should not be suspended from the Exchange.

By order of the Board of Directors.

John L. Clymer, Secretary pro Tem. JLC/McM.

"April 28, 1922.

Mr. N. G. Weinholz, 3506 Mission Street, San Francisco.

DEAR SIR: You are hereby summoned to appear before the Board of Directors of the Builders' Exchange on Friday at 11:30 o'clock, May 5th, in order to show cause why you should not be suspended from the Exchange.

[fol. 320] By Order of the Board of Directors.

John L. Clymer, Secretary pro Tem. JLC/McM."

Cross-examination

Charges against Messrs. Band, Peterson, Higgins and Weinholz were that they had refused to hire men who did not belong to Local No. 442, Plumbers' Union of Journeymen Plumbers, of which union Mr. Houghy was at that time president. Messrs. Band, Peterson, Higgins and Weinholz were notified to appear to answer the charges but did not, but proofs were taken before adjudging them guilty, and after such proofs they were found guilty. Each one had an opportunity to defend himself.

Defendant's Exhibit No. 2—By-laws of the Builders' Exchange (Revised and adopted January 21, 1922).

Witness is a heating and plumbing contractor; had men refuse to work for him between June 21, 1922, and December 12, 1922, those men refusing being members of the Building Trades Council, and the circumstances were as follows:

"At the beginning of the strike I had work up in Eureka, quite a large hotel. I had sent men up there and paid their traveling expenses, and their board up there. I got a telegram from my superintendent on the job that he had been called on, that the Secretary of the Eureka Local had a communication from the Secretary of the San Francisco Local telling him to call my men out on that job. I told him to wait and immediately I would go up on the first train up and see what the difficulty was. I really knew what the difficulty was, because the strike had already begun in San Francisco. There was no trouble between the men who were working for me, so far as labor conditions or wages are concerned, and they said so. But their Union had called them out and they went out. I, through Mr. Camp who was the foreman on the job, went down to the telephone and we got in touch with the Secretary and Business Agent of the San Francisco Local, Plumbers' Local, to see if it was necessary for them to throw up the job in the condition it was."

"He said that I would either have to be a hundred percent union [fol. 321] or the men would have to come off the job. I said that I had men working for me who didn't belong to the union and I couldn't go that way. So they quit the job. I had to hire another new crew and take them up there, and of course it cost me a loss of several thousand dollars on that particular job."

"I had another case in San Francisco. This was a Saturday morning after the strike was declared on the Santa Fe Building. I went there to pay the men off as usual, and a steamfitter, I think his name is Mr. Bradley, told me that he would not be back Monday unless I laid a certain man, a young man who was in the corner, off. This young man was 19 years old, an apprentice, learning the trade, an American boy, and I told the steamfitter, 'If I have to lay that man off, between the two, I am going to keep that young man.' I says, 'If I have to lay off men, young men who are all right, absolutely, trying to make a living, trying to support their mothers, for some rule, I am not going to do it.'"

Section 228 of the Building Ordinances of the City and County of San Francisco, State of California, regulating the erection and repair of buildings, known as the Building Laws of the City and County of San Francisco, State of California, was introduced in evidence and reads as follows:

"Section 228. All buildings shall be made so as to be impervious as possible to the ingress of rats and other vermin.

The foundation walls shall be of concrete or of brick or of stone laid in cement mortar or of some equally rat-proof material, shall extend at least one foot above the surface soil, and shall be at least eight inches thick at the top; and where openings are necessary for ventilation or other purposes, said openings must be made rat-proof by suitable metal screens.

The full floor area under all buildings must be covered by concrete at least one and one-half inches thick, except where the surface of the soil is composed of rock; provided, however, that outside of the following described district, buildings, occupying a ground space of not more than eight hundred square feet need not comply with the foregoing provision, provided that such buildings are elevated at least 18 inches above the surface of the ground and the walls supporting the buildings are left open upon three sides and the space under such buildings exposed.

The district to which the foregoing exception shall apply shall be [fol. 322] all that portion of the City and County not included within the following boundaries."

S. A. D. SCHENCK, a witness in behalf of the people, recalled, testified as follows on recross examination:

As assistant secretary of the Builders' Exchange, having in his possession a directory of the Builders' Exchange, reads therefrom, and shows the following plastering contractors who were on said directory as such during the year 1922, as members of the Builders' Exchange:

"Simon Fraser, 180 Jessie Street;
 William G. Gilmour, 180 Jessie Street;
 J. Greenback, 371 Waller Street;
 Sam Greenback, 1525 Steiner Street;
 Paul Karib, 180 Jessie Street;
 Walter Kipps, San Mateo, California;
 A. Knowles, 442 Call Building;
 Lyden & Bickel, 269 Fell Street;
 MacGruer & Simpson, 266 Tahama;
 W. G. Martinelli, 2232 Jones Street;
 T. J. Mannix, 1521 Webster Street;
 Master Plumbers' Association, 185 Stevenson St., F. W. Mecklenburg, 180 Jessie Street;
 Alex Mennie, 180 Jessie Street;
 B. Milano & Son, 443 Bellevue Avenue;

C. C. Morehouse, 872 Folsom Street;
 W. L. Nagel, 180 Jessie Street;
 Frank Morcia, 180 Jessie Street;
 Patrick O'Brien, 522 Twelfth Avenue;
 John O'Connor, 533 21st Avenue;
 Francis O'Reilly, 180 Jessie Street;
 D. O'Sullivan, 180 Jessie Street;
 J. J. Powers, 180 Jessie Street;
 Wm. B. Scott & Company, 185 Stevenson Street;
 T. D. Sexton, 351 12th Street, Oakland;
 James F. Smith, 273 Minna Street;
 Robert H. Smith, 180 Jessie Street;
 Henry J. Spring, 1346 26th Avenue;
 Charles Terranova, 180 Jessie Street;
 George Whitmore, 180 Jessie Street;
 W. Williams, 180 Jessie Street;
 H. E. Wilson, 117 Ripley Street;"

The directory contained the classified roster comprising a list of the members of the Builders' Exchange engaged in the various occupations, which are as follows:

"Automobiles, Automobile Accessories, Auto Turntables, Automatic Sprinklers, Bake Ovens, Bank, Blackboards, Boiler and Tank [fol. 323] Shops, Bonds and Insurance, Bookkeeping, Brass and Bronze, Work, Brick and Clay Products, Builders' Specialties, Building Materials, Building Paper, Cabinet Contractors, Cabinet Manufacturers, Castings, Iron, Brass and Steel, Cement, Lime and Plaster Dealers, Concrete Contractors, Coal dealers, Concrete Engineers, Concrete Machinery, Constructing Engineers, Construction Managers, Construction Superintendents, Consulting Engineer, Contracting Engineers, Contractors' and Construction Equipment, *Contractors and Construction equipment*, Coppersmiths, Corner Bead, Cornice Works, Dampproofers, Drawing Instruments, Drawing Materials, Dum-waiters, Electric Light and Power Companies, Electrical Machinery, Electrical Contractors and Dealers; Electrical Supplies and fixtures; Elevators, Employment Agencies; Fire Brick Dust and Fire Clay; Fire doors, plumbing contractors, planing mills, metal store fronts, mortar, motor trucks; Machinery; Lathing Contractors; Lumber Dealers; General Contractors; Plumbing Materials; brass goods; Power Plants; Public Accountants; Publications; Pumps; Rock, Sand and Gravel Dealers; Real Estate; Road Machinery; Roofing Contractors; Roofing and Flooring Materials; Rubber Goods; Sheet Metal; Sidewalk, Doors, Gratings and Ventilators; sidewalk lights; Skylights; Slate and Tile Roofing Contractors; Stair Builders; Steel Reinforcing Bars; Steel Sash; Street and Road Contractors; Structural Steel; Terra Cotta; Teaming, Terazzo & Mosaic; Tile Dealers and Manufacturers; Tile Mantles and Grates; Tin Plate; Tools; Upholstery and Draperies; Valves; Wall Beds; Wallboard; Wall paper and Window Shades; Water Heaters; Waterproofing; Water Service; Water Systems; Waterworks Supplies; Welding; Whitewashing and Damp-proofing; Window Cleaning; Windows;

Wire and Wire Products; Wood Preservatives; Wood Rolling Doors and Wood Partitions; Woodworking Machinery; Wrecking."

Under the above aforesaid captions appear the names of members following these occupations.

The Builders' Exchange was incorporated in 1890, and has been in existence ever since, but it does not sell materials to the public.

ALDEN F. POTTER, witness on behalf of the People, testified as follows:

Residence, 2011 Broadway; Occupation, General Pacific Coast Manager of the International Interpreter Publishing Corporation. He is not an employer of labor, nor a member of any labor union. In December, 1922, was moving his house, in San Francisco, and [fol. 324] gave a contract for some of the work to a man by the name of Weir, and witness desired to place a little more foundation under the house. Witness desired to place a fireplace therein, which he intended to do by employing one of Mr. Weir's men on the witness's own account to do this extra work. The name of the man desired was Dumas. Some brick was needed for the job. Witness attempted to buy the little desired from Gladding, McBean & Company, dealers in brick, but did not obtain the brick, because that company asked him if he had a permit to buy the material, saying "I must come there with a permit before they would sell me any."

On that information, witness went to the Builders' Exchange to secure a permit for the brick and saw Mr. Crawford, December 11, 1922. Witness stated his desire to Mr. Crawford, who asked him to sign a certain card, which witness read over and refused to sign.

In the direct examination the witness was first under the impression that the card gave in substance that the witness was to employ men on this job that the Builders Exchange gave him, or that they wanted to furnish him. Mr. Crawford, at the conversation, asked witness whether the job was an American Plan job, and witness stated he did not know, but said he saw a sign on his house reading, "An American Plan job," but Mr. Crawford would not give the permit until witness made further investigation.

Witness returned to his house, conversed with Messrs. Weir and Dumas, who advised him it was an American Plan job. Witness returned to Mr. Crawford, advised him of that fact, but Mr. Crawford refused to give him permit to purchase the brick unless he would sign the card mentioned heretofore, which he refused to do, and was therefore unable to get the bricks from Gladding, McBean.

Cross-examination:

Witness was shown Peoples' Exhibit 13, and asked if it was the card [fol. 325] concerning which he testified on direct examination, and was asked if that was the card which was presented to him by Mr. Crawford for his signature. Witness stated that he did not know

whether that was the card or not, that he did not remember what the card stated or anything about what was on the card except in some reference that the job would be run on the American Plan, and that there was a reference as to the location of the job; other than that the witness could not give any further details as to what the card contained. Witness commenced work on his building in September, 1922, and it was completed about three days prior to hearing—May 2, 1923.

Redirect examination:

Witness has stated the substance of the card as he remembered it and states his understanding to Mr. Crawford at the time of his conversation. Mr. Crawford then asked him directly about the plumbing and witness told Mr. Crawford that the plumbing contract was one which he was determined to let himself, and Mr. Crawford did not make any answer.

Recross-examination:

Witness purchased material for his house personally in San Francisco, while the strike was in progress, but did not buy any from members of the Builders' Exchange, and was refused every time he went to them, but he bought all of the material in San Francisco. The building was interrupted at times—certain portions—for 2½ months. Started foundation in October, and did not finish until last January. The men quit work on his building on account of the strike. The building is a frame structure. Foundation was placed under the building and garage and about four rooms and a ratproof basement and a bath or two. Contract amounted to about \$5,000.00. Name of the plumber on the job was Mr. Best. Witness did the brick work himself; that is to say, he hired the man; a man by the name of Dumas.

[fol. 326] L. E. CRAWFORD recalled for cross-examination.

Permit system of the Builders' Exchange was in effect only during strike. It was put into effect June, 1921, but not continuously in effect since that time. It was incorporated in April, 1922, and was in force at the present time (May 2, 1923). Is still in effect with reference to those conditions mentioned in the Minutes and Letters, but as stated above, not continuously in effect.

[fol. 327]

DEFENDANT'S EXHIBIT NO. 2

By-laws of the Builders' Exchange, San Francisco

[fol. 328] By-Laws of the Builders' Exchange, San Francisco

By-Laws of the Builders' Exchange, San Francisco (Revised and Adopted January 21, 1922)

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 Nomination for Director to be in by March 1.
 Nomination for Director to be posted ten days before annual meeting—March 5-11.
 Annual meeting and election on third Monday in March—March 15-21.
 Craft delegates to Central Council to be confirmed to Secretary by April 15.

By-Laws of the Builders' Exchange, San Francisco

Article I—Name and Location

Section 1. The corporate name and title of this Association shall be "The Builders' Exchange."

[fol. 333] Section 2. The location and place of business of this Association shall be in the City and County of San Francisco, State of California.

Article II—Corporate Powers

Section 1. The corporate powers of this corporation shall be vested in a board of eleven directors, who shall be active members in good standing holding membership certificates in the corporation, and six directors shall constitute a quorum for the transaction of business.

Article III—Objects

The objects of this Exchange shall be:

1. To provide (either by lease or purchase), furnish and maintain suitable quarters for the use of its members, for meeting rooms, offices and other necessary purposes.

2. To join in one organization all reputable persons, firms and corporations engaged in contracting, manufacturing, merchandising, or other business in connection with the building industry of San Francisco.

3. To take appropriate action, from time to time to provide just and equitable methods of dealing as between the members of the Exchange, architects, engineers, owners and employees.

4. To acquire, preserve and distribute among the members all valuable information regarding the business in which they are severally engaged.

5. To foster the opening of bids in public; to discourage the peddling of bids and irregular or irresponsible bidding; to promote the use of standard bidding blanks and standard contract forms; to oppose strikes and boycotts; to encourage co-operative effort in establishing and upholding honest and efficient business principles in the building industry.

6. To foster the unrestricted development of proficient mechanics and competent and responsible masters in the respective trades.

Article IV—Terms of Existence

Section 1. The term of existence of this Exchange shall be fifty years from and after filing the Articles of Incorporation.

Article V—Membership

Section 1. Any corporation, copartnership or person of good repute engaged in a business in connection with the building and construction industry in the City and County of San Francisco may be an active member of this Exchange upon the terms and conditions prescribed by these By-laws.

[fol. 334] Section 2. Application for active membership must be accompanied by an initiation fee of \$100.00, and shall be made in writing, upon forms provided by this Exchange, and must be signed

by the applicant in person, or in the name, and in behalf, of the applicant by a duly authorized representative.

Section 3. All applications shall be referred to the Membership Committee, which shall promptly give written notice thereof to the secretary of each Craft Council and post same at least 30 days on a board prepared for the purpose in the Assembly Room of the Exchange. The Membership Committee shall make a careful investigation as to the character and business standing of the applicant and report the result thereof to the Board of Directors, whose duty it shall be to act upon each application at its regular meeting next following the expiration of the 30-day posting period.

Section 4. Immediately upon the rejection of an applicant any initiation fee accompanying the application shall be returned to the applicant.

Section 5. As soon as may be after election, applicant shall qualify as a member by signing the Roll of Members, thereby specifically promising and agreeing to support and abide by the By-Laws, rules and regulations of the Exchange, then or thereafter, in force. In the case of a corporation member, the Roll shall be signed in the name of the corporation by an executive official thereof thereunto duly authorized in writing to the Exchange. In the case of a copartnership member, the Roll shall be signed in the name of the copartnership by one of the partners. Membership dues shall accrue from date of election, but membership privileges shall not be accorded anyone that has not qualified as aforesaid.

Section 6. Only individual active members of the Exchange, one of the members of each copartnership member, and one duly authorized executive official of each corporation member shall be eligible to hold office in the Exchange or to be members of the Central Council.

Section 7. Each active member shall be entitled to have one representative on the floor of the Exchange at any or all times during business hours, and the Board of Directors may, in its discretion, permit additional representation to any member after having received written application therefor, under such conditions as shall be determined by the Board; provided, a monthly fee equal in amount to the regular monthly dues for members to be paid regularly into the Exchange for each and every such additional representative. All representatives of members shall be duly accredited as agents by and of their respective employers, who will thereby and thereafter assume full responsibility for their acts and deportment in or about the Exchange until formal notice to the contrary has been received by the Exchange; and the acts of such representatives will be deemed the acts of their employers, respectively.

Section 8. The Exchange shall issue to each duly qualified member a Certificate of Membership, which shall be in such form, device and substance as may be provided by the Board of Directors.

Section 9. Any member, having paid in full all dues, fines, assessments, and demands against him upon the books of the Exchange, [fol. 335] may resign his membership therein by filing with the Secretary his resignation, in writing; if there are no charges pending against such member nor any dispute existing between him and any other member which is under investigation by the Exchange, his resignation shall be effective immediately, otherwise it shall be referred to the Board of Directors for final action. Upon the acceptance of the resignation of any member, all his right and interest in the real and personal property of this Exchange shall revert to the Exchange.

Section 10. Persons, not members of the Exchange, who by reason of distinguished services in behalf of the building industry, either directly or indirectly, shall be recommended for the honor by the Board of Directors and elected by vote of the members at an annual meeting of the Exchange, shall be known as and hold the title of 'honorary members.'

Such persons shall not thereby become members of the Exchange, but shall be entitled to the free use of the rooms of the Exchange, and shall be permitted to address meetings of the members thereof.

Section 11. A person who is a member of any trade union shall not be eligible to membership in the Exchange, and shall not be permitted to represent any person, copartnership or corporation therein.

Section 12. Membership privileges in the Exchange are personal and exclusive and may be transferred or assigned only to a legal successor to the member's business, and then only after due posting, investigation and on favorable action of the Board of Directors precisely as with an original application for membership.

Section 13. With the death of a member, all rights and obligations pertaining to his membership cease.

Section 14. A member of the Exchange may be suspended by action of the Board of Directors for delinquency of three (3) months or more in payment of dues or assessments. A member thus suspended may, by payment of all arrearages in full within a period of three (3) months following said suspension, be reinstated by action of the Board. If a member remain suspended for a period of six (6) months, the Board may declare his membership forfeited.

Section 15. A member of the Exchange may be suspended by action of the Board of Directors for a definite term for cause. A member thus suspended will automatically stand reinstated at the expiration of the stated term, unless otherwise specifically provided in the order of the Board of Directors enacting such suspension, the Board having full discretionary power in the premises.

Section 16. A member adjudged guilty of a felony by a court of law shall be expelled from the Exchange and his membership canceled forthwith.

A member found guilty, after due trial, as provided by the By-Laws and rules of the Exchange, of flagrant and willful violation of the By-Laws or rules of the Exchange, may be expelled and his membership cancelled by vote of eight Directors.

A person who has been expelled from membership may be read-[fol. 336] mitted to the Exchange only as provided for new members.

Section 17. Differences between members of different Craft Councils involving trade rules or ethics shall first be subject of negotiation between the Craft Councils involved. Only after formal overtures to this end have been made and have failed to accomplish a satisfactory adjustment of the differences may either party file charges based thereon with the Exchange.

Charges against a member of the Exchange involving serious negligence or misconduct on his part shall be specific and in writing, signed by a responsible person, and shall be filed with the Secretary, who will promptly refer them to the Grievance Committee for consideration and suitable action at the same time sending the accused a true, certified copy of the charges. The Grievance Committee will promptly arrange for a hearing by an arbitration Committee of five members, which may consist in whole or in part in the personnel of the Grievance Committee, or be wholly distinct therefrom; but no member of the Craft Council of which either accuser or accused is a member may sit on the arbitration committee. The proceedings of the arbitration committee will be, as expeditious as may be and its findings, in writing, signed by a majority thereof, will be filed with the Board of Directors at its next regular meeting or a special meeting following the conclusion of the case.

If the accused be adjudged guilty of any or all of the charges preferred, the Board of Directors will summon the accused to appear before it at a certain time when, whether or not the accused be present, the Board shall prescribe a fitting penalty, subject to provision of Article IX, Section 6, hereof with respect to expulsion of a member.

Article VI—Craft Councils

Section 1. The members of the Exchange shall be segregated and classified by the Secretary in accordance with their principal business activities, subject to approval of the Central Council, into trade, vocation, business and professional groups to be known as 'Craft Councils'. Members engaged in lines of business not suited, by reason of numerical weakness or otherwise, to segregation into independent craft councils shall be organized into a single craft council to be known as the Council of Unorganized Crafts.

Each member of the Exchange shall become a member of his or its proper Craft Council.

Section 2. Each Craft Council shall organize by electing a President, Secretary, and such other officers as it may require.

Section 3. Each Craft Council shall have the right to make and adopt such constitution, by-laws, rules and regulations for its gov-

ernment as it may deem necessary, not inconsistent with the By-Laws, Rules and Regulations of this Exchange, provided, that such constitution and by-laws, and all the rules and regulations of such Craft Councils, and all changes and amendments thereto must first be submitted to and approved by the Central Council. A copy of the trade rules and regulations of a Craft Council when thus approved shall be filed by the Secretary of the Exchange and a copy forwarded [fol. 337] by him to the Secretary of each of the other craft councils and will thereafter be observed and obeyed with respect to members of such Craft Council by every member of the Exchange, and the several craft councils will cooperate in upholding them.

Section 4. Craft Councils shall not enter into trade or labor agreements without the specific authorization of the Central Council.

Section 5. At any time, with the approval of the Central Council, three or more members of the Council of Unorganized Crafts engaged in the same general line of business, may organize a separate council of their particular craft.

Section 6. Each Craft Council shall maintain an active representative, selected as hereinafter provided, on the Central Council, and shall at all times keep the Secretary of the Exchange informed in writing as to its officials and representatives and their business and residence address and telephone numbers.

Section 7. It shall be the duty of each Craft Council to require of its members compliance with the laws and rules of the Exchange and the orders and instructions of the Central Council and of the Board of Directors, and to report cases of flagrant disobedience to the Board of Directors of the Exchange.

Section 8. The board of Directors of the Exchange shall have the power to require any Craft Council to submit its books and records to the Board for Examination.

Article VI—Central Council

Section 1. A standing committee, consisting of one member of the Exchange selected by and from each Craft Council (including the Council of Unorganized Crafts) shall be organized and known as the Central Council.

Section 2. Each Craft Council shall send to the Secretary of the Exchange, on or before the 15th day of April of each year the names, addresses and telephone numbers of two persons selected to represent it on the Central Council as delegate and alternate, respectively; and either person thus accredited will thereafter and until official notice is given to the contrary be recognized as having authority to act and vote in behalf of his Craft Council and its members on all matters before the Central Council; provided, the alternate shall have the right to vote in the Central Council only in the absence of the

delegate; and provided further that any craft council may, in case of temporary absence or incapacity of both its regular delegate and his regular alternate, issue temporary credentials for a definite period to another of its qualified members who will, during such fixed period only, be entitled to all the privileges of regular membership on the Central Council to the exclusion of the regular representatives. The term of office of any member of the Central Council is optional with his craft council, which may change either or both of its representatives at any time by filing written notice thereof with the Secretary of the Exchange.

Section 3. No member of the Board of Directors of the Exchange may be a member of the Central Council, except the President of the [fol. 338] Exchange, who shall, ex officio, be chairman thereof.

Section 4. The Central Council shall have the power to elect its own officers, except chairman, to adopt and enforce rules of procedure at its meetings, and to prescribe penalties on its members to be enforced by the Board of Directors.

Section 5. The Central Council shall be a forum for the full and free discussion of all questions involving the Exchange or of general interest to the membership thereof. It shall have full power to settle matters of controversy between craft councils and in matters of general interest to the Exchange or any of the respective craft councils, subject to the right of appeal to the Exchange as hereinafter provided.

Section 6. All actions and decisions of the Central Council at any meeting shall be determined by majority vote of the members present and voting; except in matters involving trade rules, wages, hours or conditions of labor, which shall require the affirmative vote of three fourths ($\frac{3}{4}$) of all the members of the Central Council for decision; shall not be effective until approved by the Board of Directors and passed by vote of three fourths of the members present and voting at a special meeting of the Exchange called for the purpose of considering such resolution. Any craft council affected by a decision of the Central Council shall have the right to appeal, in writing, within ten days thereafter, to the members of the Exchange, at a special meeting thereof, which shall be immediately called by the President, and the action of the Exchange thereon shall be final.

Section 7. The Central Council shall present a synoptical report of its proceedings during the past year at each annual meeting.

Article VIII—Election of Directors

Section 1. The Exchange at the annual meeting of members shall elect a Board of Directors consisting of eleven Directors, to serve for one year and until their successors are elected. Their term of office shall begin immediately after election. Each Director must be a member in good standing of the Exchange and of his Craft

Council, and no Craft Council may have more than one member on the same Board of Directors.

Section 2. Not later than the first day of February of each year, the President of the Exchange shall appoint a committee of three members of the Exchange to be known as the 'Nominating Committee' of the Exchange. It shall be the duty of the Secretary of each Craft Council to forward to said Nominating Committee, before the first day of March of each year, the name and address of the person recommended by said Council for nomination as a Director of the Exchange. A complete list of candidates thus recommended shall be prepared by said Nominating Committee, and posted conspicuously in the Exchange for at least ten days immediately preceding the date of the annual meeting; and at the annual meeting these candidates shall be placed in nomination by said Committee for Directors of the Exchange.

[fol. 339] Section 3. The ballot shall have written or printed thereon, arranged alphabetically, the names of all the candidates regularly nominated as hereinbefore described and blank space shall be provided on each ballot for eleven additional names; and the voters may write in the names of any other member or members for whom they prefer to vote. The names of a candidate shall not appear on a ballot more than once. All elections shall be by secret ballot. Each member must vote at one time for the whole number of Directors to be elected by placing a cross opposite the name of each person for whom he desires to vote, and any ballot indicating votes for a less or greater number than the whole number of Directors to be elected shall be invalid and counted as a blank. Each member of the Exchange shall have but one vote for each Director.

Tellers shall be appointed by the President or presiding officer of the meeting, who, after canvassing the ballots, shall report the result to the presiding officer, who shall declare the eleven candidates receiving the highest aggregate number of votes to be elected as such director, and such declaration shall be entered upon the minutes of the meeting and posted conspicuously in the Exchange.

Article IX—Duties and Powers of Directors

Section 1. The Directors shall meet immediately following their election and organize by electing from among their number a President, a first Vice-President, a Second Vice-President, a Third Vice-President, a Secretary and a Treasurer, who shall be the President, First Vice-President, Second Vice-President, Third-President, Secretary and Treasurer, respectively, of the Exchange, and as such shall hold office for the period of one year or until their successors are duly elected. No member of the Board of Directors may receive salary or remuneration of any kind for his services as such or as an officer of the Exchange, except as provided in these By-Laws.

Section 2. The Board of Directors shall have general administrative and executive control of the property and funds of the Exchange and of the discipline and welfare of the membership of the Ex-

change, subject to such limitations as may be prescribed by law or by these By-laws. The Board shall not expend, hypothecate, sell or incumber the funds or other property of the Exchange, except to defray ordinary, budgetary running expenses, during any fiscal year, to the aggregate value of over five thousand dollars (\$5,000.00) without previous authorization so to do by majority vote of members of the Exchange, present at a special meeting called for that purpose.

Section 3. The Board of Directors shall designate a bank or banks for the deposit of the funds of the Exchange, and shall require that all funds be deposited therein to the credit of the Exchange. Funds of the Exchange may be expended only by voucher check, approved by the Finance Committee, authorized by formal action of the Board of Directors and signed by the President (or a vice-president), the Treasurer and the Secretary.

Section 4. At its first regular meeting in April of each year, the [fol. 340] Board of Directors shall adopt a detailed financial budget of proposed expenditures and estimated revenue for the fiscal year commencing March 1st of that year. This budget shall immediately be posted conspicuously in the Exchange and remain so posted until displaced by the budget for the following year.

Section 5. The Board of Directors may appoint a general manager and such other employees as may be deemed necessary, prescribe their duties and fix their compensation, respectively, and such employees shall serve at the pleasure of the board.

Section 6. The Board of Directors shall have power to fine, suspend or expel members of the Exchange for cause. No member shall be expelled without first being accorded reasonable opportunity for personal hearing before the Board.

Section 7. The Board of Directors shall enforce the regulations adopted from time to time by the Central Council for the government of the members of the Exchange, and in general, support and carry forward the policies of the Central Council, subject to the provisions of these by-laws.

Section 8. The Board of Directors shall have the power by a majority vote to fill any ad interim vacancy in said Board, until the first annual meeting of the Exchange thereafter. Absence of a Director from three or more consecutive regular meetings of the Board shall warrant the Board in its discretion to declare his office vacant. Should a majority of the Board fail to convene for three successive regular meetings thereof, the President of the Exchange may declare their offices vacant and fill same by appointment.

Article X—Duties of Officers

Section 1. The president shall preside at all meetings of the Exchange, the Central Council, and the Board of Directors, shall be ex officio a member of all committee, shall appoint all committees not

otherwise provided for, and a Sergeant-at-Arms, who shall be a member of the Exchange. He shall sign all checks, notes and agreements to which the Exchange is a party.

Section 2. The First Vice-President shall, during the absence or incapacity of the President, perform all the duties of that office.

Section 3. The Second Vice-President shall, during the absence or incapacity of the President and First Vice-President, perform all the duties of the President.

Section 4. The Third Vice-President shall, during the absence of the President, First Vice-President and Second Vice-President, perform all duties of the President.

Section 5. The Secretary shall keep an accurate record of all proceedings of the Exchange, the Central Council, the Board of Directors and the several committees. He shall serve required notices on members, officers and craft councils. He shall keep proper records of all moneys received, deposited and expended and render a complete, detailed monthly financial statement of the Exchange to the Board of Directors at each regular meeting. He shall collect and receipt for all moneys due from any source and deposit the same in the bank [fol. 341] or banks designated by the Board of Directors, taking duplicate deposit slips therefor; one copy of each deposit slip he shall at once turn over to the Treasurer. At the regular monthly meeting he shall submit copy of the trial balance of his books to each member of the Board of Directors. He shall give such bond as the Board of Directors may require, the premium to be paid by the Exchange.

He shall immediately notify each craft organization of all applications filed for membership in the Exchange. He shall sign, officially, all checks, notes, agreements and other instruments to which the Exchange is a party, and all official utterances of the Exchange. He shall have the custody of the seal of the Exchange and shall use same under direction of the Board of Directors. He shall perform such other duties as usually devolve upon a secretary, and such as shall, from time to time, be assigned to him by the Board.

Section 6. The Treasurer shall receive and receipt for all duplicate deposit tags turned over to him by the Secretary, and shall see that all receipts are deposited in the bank, or banks designated by the Board of Directors, in the name of 'The Builders' Exchange'.

He shall keep a correct account of moneys deposited and paid out, said account to agree with the cash book kept by the Secretary, and shall render a report thereof to the Board of Directors at each regular meeting.

He shall give such bonds as the Board of Directors may require.

Section 7. The Sergeant-at-Arms shall be the doorkeeper at all meetings of the exchange, and shall preserve order during all meetings, and perform such other duties as may be required of him by the President.

Article XI—Standing Committees

Section 1. The President, as soon as may be after the annual meeting of members shall appoint the following standing committees:

On finance, on rooms, on publicity, on entertainment, on grievances, and on membership—all to report to the Board of Directors.

On inter-craft relations, on rules and by-laws, on safety, on public affairs, on legislation, and on industrial relations—all to report to the Central Council.

Section 2. The Committee on Finance, of three Directors, will approve all bills before payment, examine all books and accounts of the Exchange and see that they are properly kept and that they are audited semi-annually by a certified public accountant.

Section 3. The Committee on Rooms, of three Directors, will have general supervision over the rooms and offices of the Exchange, will see that employees are courteous and efficient and in general [fol. 342] see that the welfare of members and tenants is properly observed.

Section 4. The Committee on publicity, of three members, at least one of whom shall be a Director, will attend to the advancement of the interests of the Exchange, before the public and supervise the publications of the Exchange.

Section 5. The Committee on Entertainment, of three members, at least one of whom shall be a director, will arrange for periodical social activities to promote good-fellowship among the members.

Section 6. The Committee on Grievances, of five members, at least one of whom shall be a Director, will foster the peaceable and equitable settlement of differences between members of the Exchange not affiliated with the same craft council. It will consider cases under appeal and supervise their final adjudication, as hereinbefore provided. It may act as an arbitration board only by request of all parties concerned.

Section 7. The Committee on membership, of three Directors, shall study to increase the desirable membership of the Exchange and shall receive and report on all applications for membership.

Section 8. The Committee on Inter-craft Relations, comprising five members, at least one of whom shall be a member of the Central Council, will consider and advise the Council on all matters concerning trade agreements and concerning relations with state and national industrial organizations.

Section 9. The Committee on Rules and By-Laws, comprising five members, at least one of whom shall be a member of the Central Council, will consider and advise the Council in regard to the By-Laws and rules of the Exchange and of the several craft councils.

Section 10. The Committee on Safety, comprising five members, at least one of whom shall be a member of the Central Council, will

study questions relating to industrial safety and compensation insurance, and report conclusions to the Council.

Section 11. The Committee on public affairs, comprising five members, at least one of whom shall be a member of the Central Council, will study co-operative measures with other quasi-public organizations in the interest of the public welfare and advise the Council in regard thereto.

Section 12. The Committee on Legislation, comprising five members, at least one of whom shall be a member of the Central Council, will study the legislative interests of the building industry and report to the Council.

Section 13. The Committee on Industrial Relations, comprising five members, at least one of whom shall be a member of the Central Council, will consider all labor problems affecting the local building industry and advise the Council in the interest of harmony, efficiency and fair play for employer, employee and the public.

[fol. 343] Article XII—Meetings and Voting

Section 1. The regular annual meeting of the members of the Exchange shall be held in the City and County of San Francisco on the third Monday of March of each year, for the election of Directors and the transaction of other business.

Section 2. Special meetings may be called by the President, when in his judgment necessary, and shall be called by the President when requested in writing by the Board of Directors, the Central Council or by 50 members in good standing. Said request, and the notice of the meeting, shall state the business to be transacted at each meeting.

Section 3. Notice of meetings of the Exchange, addressed to each member, shall be mailed or delivered to his or its address of record with the Secretary and a copy at the same time posted on the bulletin board in the Exchange, at least five and not more than twenty days prior to the date of meeting; provided, adjourned sessions of regular or special meetings may be held without other notice than that given by the chair in announcing the vote on the question of adjournment and the posting of memorandum thereof on the bulletin board of the Exchange immediately after such adjournment; and provided, that no such adjournment shall be taken to a date on or after the date fixed for the next annual meeting of the Exchange. No notice of meetings of the Exchange, except as hereinbefore specified, shall be required.

Section 4. A quorum for the transaction of business at any meeting of the Exchange shall consist of not less than 100 active members in good standing.

Section 5. Each individual actual member of the Exchange in good standing shall be entitled to vote at all meetings; provided,

that copartnership and corporate members may act only through a single duly authorized partner or executive officer, as the case may be; and provided that voting shall be done in person by those duly qualified as aforesaid.

Section 6. At any regular or special meeting of the Exchange a vote of twenty-five (25) members may secure a secret ballot on any proposition under discussion.

Section 7. The regular meetings of the Board of Directors shall be held at the Exchange on the last Friday of each month at the hour of 1.30 o'clock P. M. without notice.

Section 8. Special meetings of the Board of Directors may be called at any time by the President.

The Secretary shall give each Director written notice of each special meeting, in person or mailed to his address of record with the Secretary of the Exchange, not less than two days before the date of such meeting.

Section 9. A quorum for the transaction of business of the Board of Directors shall consist of six directors.

Section 10. The Central Council shall meet regularly at the Exchange on the third Wednesday of each month without notice. [fol. 344] Special meetings shall be held at the call of the President, or on request of the Board of Directors, or on written request of fifteen or more members of the Council. Fifteen (15) members shall constitute a quorum for the transaction of business. The Secretary shall give each craft council written notice of each special meeting, mailed or delivered to its address of record in his office not less than two days before the date of such meeting.

Section 11. The meetings of standing committees shall be held at the call of their respective chairman, and it shall be the duty of the chairman of any committee to assemble the members of his committee on request of the President. A quorum of each committee shall consist of a majority thereof, except in the case of the Central Council, which shall be as hereinbefore provided.

Article XIII—Dues, Assessments, and Fines

Section 1. The fee for admission to active membership in the Exchange shall be \$100.00 half of which shall subsequently be transferred to and constitute the initiation fee into the Craft Council to which the member shall ultimately be assigned.

Section 2. The dues of active members shall be \$3.00 per month, payable in advance.

Section 3. The Board of Directors, on its own motion, or upon recommendation of the Central Council, may create and provide for a fund by assessments upon Craft Councils or otherwise, for extraordinary or emergency expenses.

Section 4. All fines and assessments shall be paid into the Exchange, and disbursed only by action of the Board of Directors.

Article XIV—Corporate Seal

Section 1. The Exchange shall have a seal, consisting of a circle, having on its circumference, the words 'The Builders' Exchange, San Francisco, California,' and outside the circle the words 'Incorporated July 5th, 1890.'

Article XV—Order of Business

Section 1. When appropriate, the order of business at all meetings of the Exchange, the Central Council, and the board of Directors shall be—

- (a) Call of the roll.
- (b) Reading of minutes.
- (c) Report of Secretary.
- (d) Reports of Committees and Officers.
- (e) Communications.
- (f) Unfinished business.
- (g) New business.
- (h) Adjournment.

[fol. 345] Article XVI—Amendment and Rules of Order

Section 1. These By-Laws may be changed or amended at the regular annual meeting of the members, or at a special meeting called for that purpose, by a two-thirds' vote of all the members present; provided, one month's notice has been given of such proposed change or amendment.

Section 2. Roberts' Rules of Order will govern meetings when not in conflict with By-Laws or Rules of the Exchange.

[fol. 346] Constitution of Industrial Association of San Francisco

Know all men by these presents: That the undersigned have this day voluntarily associated themselves together for the purpose of forming a voluntary unincorporated association, and they have and do hereby adopt the following Constitution and By-Laws governing said Association:

Name

First. The name of said Association shall be "Industrial Association of San Francisco."

Objects

Second. The purposes and objects for which it is formed are to promote the happiness and prosperity of the people of San Fran-

cisco, and thru harmony and efficiency, to make of San Francisco a great metropolis.

To accomplish this, it is the object of this Association to aid in making San Francisco constantly attractive; first, to men who desire to work; second, to men engaged in constructive enterprises; and, third, to investors of capital.

In the attainment of these purposes and objects, the Industrial Association commits itself to the policy of furthering and preserving certain basic principles indispensable thereto. Among these basic principles are:

(1) The right of any person to seek, secure and retain work for which he is fitted, and the right of the employer to engage or dismiss employees, should not be abridged or denied because of membership, or lack of membership in any organization or association of any kind.

(2) Efficiency in Industry.—This should be created and maintained to enable our enterprises to cope with those of other places. Superior skill and industry in work should be permitted to earn an adequate reward. The establishment of this principle, however, is not to be used to reduce the earnings of a less able man below a fair return for the work done. No artificial limit or restriction should be placed upon the normal production of any man or upon the use of any appliance, invention or other means to increase output, always having due regard for the health, safety and well-being of the individual.

(3) The right of management is inseparable from responsibility for industrial results. Therefore the right of the employer to engage or dismiss men individually or merit must not be circumscribed; the right on all occasions, however, to be exercised only upon broad principles of justice, and with a recognition of the obligation on the part of management to co-operate with the employee in securing so far as possible continuous employment.

(4) No understanding should be reached between employers and [fol. 347] employees that ignores the public interest, and no agreement should be tolerated that is illegal or contrary to sound public policy, whether made between employers themselves or with their employees or others.

Place of Business

Third. The office and principal place of business shall be the City and County of San Francisco, State of California.

Directors

Fourth. The number of Directors of said Association shall be thirty (30) and the names and residences of those selected for the first year and until their successors shall have been chosen and qualified are as follows:

1. B. P. Anderson.....	345 Montgomery St.
2. J. B. Brady.....	300 O'Farrell St.
3. Geo. Q. Chase	26 O'Farrell St.
4. C. D. Clark	Pier No. 31.
5. Thos. J. Coleman.....	Hotel St. Francis.
6. J. Cushing.....	310 Sansome St.
7. J. F. Daneke.....	301 Mission St.
8. A. W. Eames.....	101 California St.
9. Paul I. Fagan.....	2 California St.
10. B. R. Funsten.....	7 Front St.
11. D. Lyle Ghirardelli.....	940 N. Point St.
12. Walter A. Haas.....	Pine & Battery Sts.
13. Walter G. Hyman.....	2600 Taylor St.
14. R. H. Ivory.....	200 Bush St.
15. Otis R. Johnson.....	Crocker Bldg.
16. S. E. Kauffman.....	565 Market St.
17. J. W. Milliard, Jr.....	203 California St.
18. Atholl McBean.....	Crocker Bldg.
19. W. P. Roth.....	120 Market St.
20. E. J. Schneider.....	Rialto Bldg.
21. M. J. Sullivan.....	Mills Bldg.
22. Walter Sutton.....	859-869 Third St.
23. Geo. E. Townsend.....	401 California St.
24. F. B. Drake.....	Rialto Bldg.
25. H. B. Allen.....	168 Sutter St.
26. Frederick J. Young.....	409 Montgomery St.
27. E. R. Anthony.....	3rd & Townsend Sts.
28. William W. Crocker.....	Crocker Bldg.
29. P. M. Downing.....	445 Sutter St.
30. Fred Braun.....	580 Valencis St.

Dues

Fifth. The annual dues of each member shall be Twelve Dollars (\$12) per year, payable in advance annually or quarterly at member's option.

Membership

Sixth. Any person subscribing to the principles and purposes hereinbefore set forth, shall be eligible to membership in the following manner: He shall apply for membership and shall be [fol. 348] sponsored by one member. Thereafter his application shall be acted upon by the Board of Directors, as provided for in the By-Laws.

Property

Seventh. The title to and ownership of all property belonging to this Association shall be vested in this Association, and shall be managed by the Directors thereof. No membership shall be deemed or held to give to any member any right, title or interest, legal or

equitable, in or to the Association property, or any part thereof, other than that provided in this Constitution or by the By-Laws.

Eighth. The persons heretofore named as the original Directors are regular members of this Association.

Suspension and Expulsion

Ninth. Every member of this Association and every person, firm or corporation hereinafter becoming a member hereof shall be liable at any time to expulsion or suspension for misconduct, or for non-payment of dues or other fees, and the By-Laws shall contain the rules and regulations in that behalf; and upon the expulsion of any member, all his rights and interests, legal and equitable, in the Association or in its property, shall cease.

Power of Directors

Tenth. The government of this Association and the control of its property shall be vested in the Board of Directors, who shall have power to make all necessary contracts, to borrow money, to secure the same by mortgage or deed of trust of the property of the Association, and as evidence of the indebtedness secured by such mortgage or deed of trust, to issue bonds therefor, to pay and discharge all debts, and to do all matters and things necessary or incident to, or in aid of the carrying out of the objects and purposes of this Association; and they shall have the charge and control of all its property, and may levy assessments upon the members in the manner and subject to such rules, regulations and restrictions as the By-Laws of this Association may provide.

Voluntary Association

Eleventh. This Association shall be purely a voluntary Association and in no sense a copartnership.

Amendments to Constitution

Twelfth. This Constitution may be amended or revised in the following manner, to-wit:

Whenever an amendment to this Constitution is proposed and signed by not less than Fifty (50) members of the Association, it shall thereupon be the duty of the President and Secretary of this Association, within ten (10) days thereafter, to send written notice to the last known place of residence or address of each of the members, notifying the members that a certain amendment has been [fol. 349] proposed to this Constitution. The amendment shall be set out in full, and the notice shall likewise give information as to the time and place at which the proposed amendment shall be voted upon, which time must be not less than ten (10) days after the mailing of this notice. The President and Secretary shall cause

ballots to be prepared, on which ballots shall be plainly and briefly printed a short synopsis of the proposed constitutional amendment and opposite the same shall cause to be printed two columns, on the top of one of which shall be printed "Aye", signifying approval of the proposed amendment, and on the top of the other column "No", signifying opposition thereto, so that the member may vote in whichever column he desires. Polls shall be open from 10 o'clock in the morning until 4 o'clock in the afternoon. Immediately upon the close of the ballot a count shall be had of the votes cast and the official result declared. Upon the declaration of the result of the election the Constitution shall stand or shall be amended, according to the result of the election.

It shall require at least a three-quarters ($\frac{3}{4}$) vote of all those participating in the election to adopt any constitutional amendment.

No election in regard to amending the Constitution shall be deemed a valid election unless participated in by at least two hundred and fifty (250) members at the time of the election.

By-Laws

Thirteenth. The By-Laws hereto annexed shall be the original By-Laws of this Association. The same may be amended by the Board of Directors at any time by a vote of twenty-one (21) members of said Board.

In witness whereof we have hereunto subscribed our names, this 8th day of November, 1921.

B. P. Anderson, J. B. Brady, Geo. Q. Chase, C. D. Clarke, Thos. J. Coleman, J. Cushing, J. F. Daneke, A. W. Eames, Paul I. Fagan, B. R. Funsten, D. Lyle Ghirardelli, Walter A. Haas, Walter G. Hyman, R. H. Ivory, Otis R. Johnson, S. S. Kauffman, J. W. Mailliard, Jr., Atholl McBean, W. P. Roth, E. J. Schneider, M. J. Sullivan, Walter Sutton, Geo. E. Townsend, F. B. Drake, H. B. Allen, Frederick J. Young, E. R. Anthony, William W. Crocker, P. M. Downing, Fred Braun.

[fol. 350] By-Laws of Industrial Association of San Francisco

Article I—Name and Object

Name.—Section 1. The name of this Association shall be "Industrial Association of San Francisco."

Objects.—Section 2. Its object shall be to further the industrial welfare of San Francisco, as more particularly set forth in the Constitution.

Article II—Membership

Qualifications

Section 1. Any person, firm or corporation residing, doing business, owning property in or interested in the advancement of San Francisco shall be eligible to membership.

Applications for Membership

Section 2. Each applicant for membership shall make written application to the Directors, indorsed by one member stating his vocation and place of business, and agreeing to subscribe to the Constitution and conform to the By-Laws, Rules and Regulations adopted from time to time by this Association. Each application shall be referred to the Membership Committee of the Board of Directors. Applicants so recommended, when approved by the Membership Committee of the Board of Directors, shall be voted upon at the next ensuing meeting of said Board, and each applicant receiving a majority of the votes shall be declared elected to membership.

Membership Cards

Section 3. Every member shall, upon payment of his annual dues, be given a membership card for that year, in such form as may be prescribed by the Board of Directors, and shall likewise be given a certificate of membership in such form as may be prescribed by the Board of Directors.

Payment of Dues

Section 4. Every member elected as herein provided shall pay to the Treasurer, in advance, his dues either for the quarter or for the year, as hereinafter provided.

Withdrawal

Section 5. All resignations of members shall be presented in writing to the Board of Directors, who shall refer same to the Membership Committee for investigation. The Membership Committee shall report their recommendations to the Board of Directors, who will take final action on the resignation. No resignation shall be accepted unless all dues, assessments and other moneys payable, have been paid.

Article III—Dues

Section 1. Dues shall be Twelve Dollars (\$12.00) per year. Payment may be made in advance annually or quarterly at the member's option.

Payment

Section 2. If any member shall fail to pay his dues within two (2) months after they are due, notice of such delinquency shall be mailed him by the Secretary, at his last known address, and if at the end of ten (10) days his dues shall then be unpaid, the Board of Directors may, upon the recommendation of the Membership Committee, by resolution, drop the delinquent from membership.

Article IV—Officers and Directors

Officers

Section 1. The Board of Directors, at the first meeting after their election, shall elect from their number a President, four (4) Vice Presidents, a Secretary and a Treasurer.

Number

Section 2. The Board of Directors shall consist of thirty (30) members elected as hereinafter provided, representing, as far as practicable, the various lines of business represented in the membership. Any vacancy occurring in the Board of Directors may be filled by the remaining Directors until the next annual election.

Advisory Committee

Section 3. The Board of Directors shall appoint an Advisory Committee of eleven (11) from the membership of the Association, whose duty it shall be to counsel and advise with the President and other officers of this Association.

Article V—Duties of Directors

Control

Section 1. The Directors shall have the management of the property, business and affairs of the Association, and shall direct its commercial, industrial, public and financial policies, subject to such [fol. 352] instructions as may be given at duly called meetings of the Association.

Meetings

Section 2. Regular monthly meetings of the Board of Directors, unless otherwise ordered, shall be held at 11 A. M., on the second Tuesday of each month. No notice need be given of the regular meeting. Sixteen (16) shall constitute a quorum. Any Director failing to attend three (3) consecutive meetings without an excuse good and sufficient in the opinion of the Executive Committee, shall be considered as having tendered his resignation, and the Association may accept the same.

Special

Section 3. Special meetings of the Directors may be called by the President and shall be called upon the written request of five (5) Directors, or by a majority vote of the entire Board. Written notice of such meeting shall be mailed at least twenty-four (24) hours before the day upon which the meeting is called. Meetings may also be held on verbal notice on less time, provided, however, that at such meetings at least sixteen (16) members of the Board of Directors be present and give their consent thereto.

Charges

Section 4. The Directors shall examine charges of misconduct preferred against any member of the Association, when made by a member in writing to the President or Secretary.

Offense—Verdict

Section 5. If any member be found guilty of any misconduct detrimental to the character and interests of the Association or subversive of its principles, the Directors shall reprimand, suspend or expel such member, as may be determined upon an examination of the nature and gravity of the offense committed; but an affirmative vote of at least twenty-one (21) of the Directors shall be necessary.

Defense

Section 6. No member shall be censured, suspended, or expelled by the Board of Directors without an examination of the charges preferred against him, or without having an opportunity to be heard in his own defense. Notice, accompanied by a copy of the charges against him, shall be served on the accused member at least forty-eight (48) hours before such examination. Notice may be served upon the accused personally by the Secretary or any of his assistants, or it may be left at his (the accused's) ordinary place of business, or be left at his last known address, in either of which cases the notice shall be considered sufficient, and the examination may then proceed, whether the accused is present or not.

Counsel not Permitted

Section 7. Under no circumstances shall any member be represented by an attorney-at-law before the Board of Directors or before a Committee of the Association.

Reinstatement

[fol. 353] Section 8. A suspended member, or a person who has forfeited his membership, may be reinstated by the Directors, pro-

vided notice of application for reinstatement shall have been mailed and posted on the bulletin board for at least ten (10) days prior to such action as provided in Section 2 of Article II.

Vote

Section 9. Any member who has been expelled may again become a member only by an affirmative vote of at least twenty-one (21) of the Board of Directors; and application for membership shall be made as provided in Article II.

Testimony

Section 10. Any member who shall neglect or refuse to appear and testify before the Directors, or any duly constituted committee in any investigation, trial, or hearing, after having been notified in writing by the Secretary or by the chairman of the committee to so appear, or any member who, when testifying, shall refuse to answer any question which the Directors or committee deem proper and pertinent to the case in hearing, shall be subject to suspension by the Directors from all privileges of the Association for such period as they may determine. Any member may likewise be suspended if found guilty by the Directors of contempt while acting as a witness before them, or before any committee, upon the submission of a report in writing by such committee, stating the circumstances of such contempt. No witness shall be compelled to answer any question which may incriminate himself or which is legally privileged nor shall any testimony be admitted which, in the opinion of the Directors or committee, is irrelevant. The Directors or committee, in investigating any charges involving the conduct of members, shall be the sole judges of what evidence is competent or relevant.

Notice of Suspension and Expulsion

Section 11. Upon the suspension, expulsion or forfeiture of membership of any member, notice thereof shall be given in writing to such member by the Secretary, and shall be posted on the bulletin board of the Association on the day following the verdict.

Article VI—Duties of Officers

President

Section 1. The President shall preside at the meetings of the Association and of the Directors. He shall, at the annual meetings of the Association and at such other times as he shall deem proper, communicate to the Association or to the Directors such matters, and make such suggestions as may tend to promote the prosperity and increase the usefulness of the Association. He shall be ex-officio a member of all Committees. He shall perform such other duties as pertain to the office of President, and shall have the custody of all bonds.

Vice-Presidents

Section 2. In the absence or disability of the President, the First [fol. 254] Vice-President shall perform the duties of the President; and in the absence or disability of the President and First Vice-President, the Second Vice-President shall perform the duties of the President; and in the absence or disability of the President and the First and Second Vice-Presidents, the Third Vice-President shall perform the duties of the President; and in the absence or disability of the President and the First, Second and Third Vice-President, the Fourth Vice-President shall perform the duties of the President; and in the absence or disability of the President and all Vice-Presidents, the Directors shall designate a Director to perform such duties.

Treasurer

Section 3. The Treasurer shall receive all moneys due the Association, and under the direction of the Directors shall deposit, invest and disburse the same. He shall not pay out funds of the Association except on vouchers for payment signed by those designated by the Board of Directors. He shall keep, or cause to be kept, regular books of accounts, and carefully preserve the same and all vouchers for the payment of money, and shall have the custody of all bonds except his own and of all securities belonging to the Association. He shall communicate to the Directors, Executive Committee or Committee on Finance any information they may require at any time, and at least once every month the state of the treasury in detail. He shall render an annual report to the Directors, which shall be audited before presentation. The funds, books, vouchers and securities in his hands shall, at all times, be under the supervision of the Directors, and subject to their inspection and control. He shall, at the expense of the Association, furnish and maintain a bond with a surety or sureties satisfactory to the Directors, for the faithful performance of his duties, and in such penal sum as they may direct, and perform such other duties as the Directors may prescribe.

All cash belonging to the Association, and kept or deposited in the cash reserve funds, consisting of cash receipts from contributors and others deposited in a bank or banks to the credit of this Association, shall be subject to withdrawal only when the checks issued are signed by the President or a Vice-President, and countersigned by the Treasurer or Secretary of the Association.

Money may be transferred from the above-mentioned reserve funds to active bank accounts of the Association, this bank account to be used for the purpose of paying the current expenses of the Association and receiving deposits of cash refunds, and after such transfer shall be subject to withdrawal only when the checks issued are signed by the President, Vice-President, or General Counsel, and countersigned by the Treasurer, Secretary, or Auditor of this Association.

All the officers and other employees having access in any manner to cash or securities belonging to the Association, shall be under an indemnity bond of a reliable bonding company.

At the expiration of his term of office, the Treasurer, shall transfer all funds, books, papers and other property of the Association in his possession to his successor.

Secretary

[fol. 355] The Secretary shall, under the direction of the Board of Directors, keep the records of the Association, preserve all books, documents and communications, and keep an accurate record of the meetings of the Association, the Directors and all committees. He shall personally, or by assistant, act as secretary of all committees of the Association. He shall conduct the correspondence of the Association and perform such other duties as the Directors may prescribe. At the expiration of his term of office he shall deliver to the Directors all books, papers and property of the Association in his possession.

Article VII—Meetings

Special

Section 1. Special meetings of the Association shall be held when called by the Directors or the President, upon written request to the President or Directors of fifty (50) members, stating the purpose of the meeting. Not less than four (4) days' written notice by mail to their last known address shall be given members of special meetings. In cases of emergency, of which the President shall be the judge, special meetings may be held on not less than twenty-four (24) hours' notice. The purpose of the meeting shall be stated in the notice. At special meetings of the Association only such business as is set forth in the notice shall be discussed or acted upon.

Annual

Section 2. The annual meeting of the Association shall be held on the second Tuesday in January at 1:30 o'clock P. M., upon such notice as the Directors may prescribe.

Quorum

Section 3. Twenty-five (25) members shall constitute a quorum at any meeting.

Hours

Section 4. The hour for meetings, other than the annual meeting, shall be fixed by the President.

Reference—Advisory—Non-reference

Section 5. No member shall read or offer for action any communication, report or resolution that has not previously been con-

sidered by the Directors, without first making a general statement of the subject matter thereof. Should five (5) members object to immediate consideration by the Association, the question shall be referred to an advisory committee of three (3) to be immediately appointed by the presiding officer. After hearing any statements the member offering or the members objecting may desire to make, said advisory committee shall report back to the same meeting of the Association, with a recommendation that the question be acted upon at once, referred for future action, or laid on the table. This section shall not apply to any communication, report or resolution submitted by the Directors, which shall be acted upon without reference.

[fol. 356] Article VIII—Nominations and Elections

Time

Section 1. The election of Directors shall be held on the second Tuesday in December. All elections shall be held at the principal office of the Association unless the Board of Directors by resolution, specifically fix some other place. At such annual election the members shall elect to serve for the term of one (1) year and until their successors are elected and qualified, thirty (30) directors. The persons receiving the highest number of votes shall be declared elected.

Nominating Committee

Section 2. The Directors shall elect at their regular meeting in October seven (7) voting members of the Association to serve as a Nominating Committee.

Vacancy

Section 3. A vacancy in the Nominating Committee shall be filled by the remaining members, with the concurrence of the President.

Ticket

Section 4. The Nominating Committee shall nominate candidates for Directors to be elected. Such nominees shall be known as the "official ticket." Only such members as have expressed to the Nominating Committee their willingness to serve, shall be nominated.

Posting

Section 5. The report of the Nominating Committee shall be posted on the bulletin board and a printed copy thereof mailed to each member of the Association at least twenty (20) days prior to the annual election.

Independent.

Section 6. Any fifty (50) members of the Association may nominate one (1) or more members for Directors by filing the name or

names over their signatures with the Secretary not later than ten (10) days prior to the annual election. In the event of such independent nominations being made the Secretary shall send to each member at least five (5) days before the annual election a list of the persons so nominated, together with another list of nominees on the official ticket. These lists shall accompany the complete ballot as provided in Section 7.

Ballot

Section 7. The names of all the candidates nominated shall be arranged on the ballot in alphabetical order according to their surnames without designation as to mode of nomination. The ballot shall be so printed as to give each voter an opportunity to designate his choice of candidates and shall indicate the time and place of election.

[fol. 357]

Polls

Section 8. The polls shall be open on the day of the annual election during such hours as the Directors may determine, but for not less than three (3) hours. Notice of the hours for balloting shall be sent to each member.

Section 9. Ten (10) days prior to the annual election the President shall appoint and announce, by posting on the bulletin board, a committee of not less than three (3) judges, who are not Directors or candidates, to have supervision of the election. They shall serve from the opening of the polls until the results of the election shall have been determined and at least two (2) of them shall be present at all times during the election. The judges of election shall canvass the vote and make a return thereof to the President and post a duplicate return on the bulletin board of the Association.

Canvassing

Section 10. Members shall not be privileged to canvass for votes or advocate the election of any candidate in the rooms of the Association during the time when the polls are open.

Tie

Section 11. In the election of Directors, should a tie vote occur, the judges of election shall cast lots and certify as elected the person or persons whom the lot determine.

Voting

Section 12. All voting shall be by ballot. No cumulative voting shall be allowed. A plurality of the votes cast shall constitute an election.

Certification

Section 13. The committee of judges shall certify the election of the candidates.

Article IX—Committees

Section 1. The President shall, subject to the approval of the Board of Directors, appoint the following standing committees, the members to serve until the next annual meeting and until the appointment of their successors.

- (a) Executive Committee, composed of seven (7) officers.
- (b) Industrial Relations Committee, composed of five (5) members.
- (c) Administrative Committee, composed of four (4) members.
- (d) Publicity Committee, composed of three (3) members.
- (e) Membership Committee, composed of five (5) members.
- [fol. 358] (f) Finance and Auditing Committee, composed of five (5) members.

Section 2. The president shall also appoint, subject to the approval of the Board of Directors, such special committees as may be required from time to time.

Section 3. The Board of Directors shall by resolution prescribe the functions and duties of the various committees hereinbefore named unless the same are in these By-laws differently fixed.

Executive

Section 4. The Executive Committee shall have full power in all emergencies to act in place of the Board of Directors when it is impossible or impracticable to summon a proper meeting of said Board of Directors, and shall determine the scope of the activities of the Association.

Industrial Relations

Section 5. The Industrial Relations Committee shall make a report on all the industrial problems which may be called to its attention and report the facts of the same and its conclusions to the Board of Directors.

Administrative

Section 6. The Administrative Committee shall handle the problems of organization, membership and office management, be responsible for the proper holding of meetings, and have control of purchases and records of the Association.

Publicity

Section 7. The Publicity Committee shall secure and be responsible for all publicity for the Association. Statements regarding the affairs of the Association or its attitude in respect to any matter shall be made public only by the President, the Board of Directors, or by the Chairman of this Committee, or some person delegated by the latter to act for the Committee.

Membership

Section 8. The Membership Committee shall carefully scrutinize and pass upon and recommend for action to the Board of Directors, all applications for membership. They shall be responsible for the securing and retaining of the membership necessary for the proper support of the Association.

Finance and Auditing

Section 9. The Finance and Auditing Committee shall be responsible for the collection of dues and subscriptions, all disbursements, credits and banking and accounting matters. They shall make recommendations concerning what appropriations shall be made from time to time to cover expenditures. Annually, in the month of December, the Finance Committee shall make a careful estimate of the receipts and expenses of the Association for the past as well as for the ensuing calendar year.

Duties

[fol. 359] Section 10. Except when specified in these By-laws or by the Directors, the duties of committees shall be such as are usually performed by such respective committees as may be assigned to them.

Vacancies

Section 11. All vacancies in committees shall be filled in the same manner as the original appointment or election was made.

Meetings

Section 12. Meetings of any committee may be called by its chairman or by the President, and a majority of the members of any committee shall constitute a quorum. Each committee shall fix a time and place for holding its regular meetings.

Article X.—Disbursements

Authority

Section 1. All moneys shall be disbursed as provided for in Article VI, Section 3, of these By-laws.

Audit

Section 2. A certified public accountant, selected by the Directors, shall examine and audit the books and accounts of the Association at least quarterly and report the results of such examination to the Directors.

Special

Section 3. The ordinary revenue of the Association may be augmented by bequests or contributions for the conduct of its general work or for the institution or prosecution of any special enterprise or undertaking which, in the opinion of the Directors, properly comes within its scope. Any member may pay to the Association, in addition to his annual dues, any sum he may desire to contribute for its general work, or for any specific object designated by him and approved by the Directors.

Prohibited Appropriations

Section 4. There shall be no appropriations of money noted either by the Board of Directors or by the Association, except for the necessary purposes and business of the Association.

Article XI.—Amendments of By-laws

Method

Section 1. These By-laws may be altered or amended at any time by a vote of twenty-one (21) members of the Board of Directors. No such amendment shall take place, however, unless the proposed [fol. 360] amendment is personally mailed to each member of the Board of Directors not less than twenty (20) days before action on said amendment takes place.

The following pages numbered 179 to 204 are copies of the following Exhibits in the case:

Defendants' Exhibit No. 3.....	pp. 179-182
Defendants' Exhibit No. 4.....	pp. 183-184
Defendants' Exhibit No. 5.....	p. 185
Defendants' Exhibit No. 6.....	pp. 186-187
Defendants' Exhibit No. 7.....	pp. 188-193
Defendants' Exhibit No. 8.....	pp. 194-195
Defendants' Exhibit No. 9.....	pp. 196-198
Defendants' Exhibit No. 10.....	pp. 199-200
Peoples' Exhibit No. 38.....	p. 201
Peoples' Exhibit No. 39.....	p. 202
Peoples' Exhibit No. 40.....	pp. 203-204

DEFENDANTS' EXHIBIT #3

"Award and Report of Impartial Wage Board for San Francisco Building Industry"

The Impartial Wage Board for San Francisco Building Industry respectfully submits this report on the wages established by it for the members of the building trades crafts.

The functions of the Board, as defined by the terms of its appointment, are limited to the "establishment of proper differentials in the wages paid to the various crafts—which will involve readjustments rather than general flat increases or decreases in all wages"; it "is to [fol. 361] have no jurisdiction over working conditions, hours, questions of restriction of output, etc."

The task of the Board was to adjust wages equitably, approximating as closely as possible a compensation which should be a true measure of the value of the service. If the Board could have been guided by the sole consideration of rewarding labor exactly according to skill or economic value, the task would have been comparatively simple. But such a scheme of appraisal, though ideal in theory, is not feasible in practice. While skill should be largely the determining factor of compensation, it cannot, of necessity, be controlling.

The Board had to bear in mind the lack of continuity of employment in many crafts. It is not so much what a craftsman receives by the day as it is what he receives by the year which counts in determining his real compensation. The Board was primarily concerned with the establishment of an annual as opposed to a daily wage. This feature of an interrupted or non-continuous employment could be measurably corrected, though perhaps not completely eliminated. It is not within the immediate function of the Board to suggest remedies. In a general way it may be urged that greater elasticity in the crafts, looking to a reduction of their number and the amalgamation under one craft of workers in the same class of material, would help the situation. The problem calls for most careful study by men of expert knowledge.

In addition to this consideration of the non-continuous nature of the employment, which stands in the way of compensating the craftsman on the exclusive basis of standard of skill, there is the further consideration of the varying hazard to life and limb of employment in certain crafts. Where the jeopardy to life and limb is great the [fol. 362] craftsman is legitimately entitled to higher compensation.

In some of the trades the Board was compelled to recognize a distinct shortage of craftsmen. The Board calls attention to the fact that this shortage is artificially created and in no wise due to the normal operation of economic laws. This false economic situation must be corrected in the interest of the trades themselves and of the public.

Of course, at the base of every scale of wage lies the element of the cost of living, or, otherwise expressed, the purchasing value of money. The existing increased cost of living, therefore, necessarily

influenced and guided the Board in fixing the wage scale as a whole, irrespective of its immediate task of the readjustment of the differentials in the wages paid to the various crafts.

Besides the wage for the journeymen craftsmen the Board had to fix the wage for helpers, skilled laborers, and common laborers. It has established a uniform wage for the skilled laborer, likewise for the common laborer, and, with slight variation, a uniform wage for the helper. The scale for the skilled laborer is a little higher than that of the common laborer because of the difference in skill and, also, because the former works one-half day less in the week than the latter.

The position of the helper is particularly deserving of attention. Though not possessed of the skill of a journeyman, he is on the road to improving himself in the craft and of becoming a full fledged journeyman through practical experience and training. Every encouragement should be given him to move ahead.

The investigation disclosed a circumstance to which particular attention is directed, and that is that by reason of the fact that conditions in the building trades industry have been made more nearly normal and free from artificial restriction, the actual efficiency value of labor in building construction was at least 20 per cent greater in the year 1921 than in the year 1920, though the reduction in the wage scale made by the Arbitration Board was only $7\frac{1}{2}$ per cent. In other words, though the reduction in wage was only $7\frac{1}{2}$ per — there may be a further reduction in the labor cost of building construction is a matter of uncertain speculation. If it does occur it is safe to say that it will be gradual and spread over a period of time.

It is well to note that the Wage Board is confined to the establishment of wages of men engaged in the building trade crafts; its decision in no wise affects wages of men engaged in similar crafts outside the building industry where different conditions of employment prevail.

By way of recapitulation: In establishing the wage of any craft in the building industry, the Board was guided by the sound economic principle of the relative skill of that craft with respect to other crafts, but modifying that principle in its application by the consideration of the continuous or non-continuous nature of the employment, and of the relative hazard to life and limb involved in the pursuit of the craft.

In some instances there had to be considered the disastrous effect upon established standards of living which would be worked by drastic reductions in wage.

The compensation prescribed is that which is to prevail for the general average skill in the crafts, still permitting allowances in individual instances for adjustments, based on variations from that average. Then, too, allowances must necessarily be permitted in the [fol. 364] case of steady employment on a compensation fixed by the month or other stated period for work done on or within completed buildings; that is, buildings not in the course of construction.

It has been deemed best to postpone for future consideration the

wage scale for truck drivers and teamsters employed in the building industry.

In the interest of stability in the building trades industry, the wage now laid down shall go into effect on the first day of January, 1922, and shall continue throughout the calendar year, to wit: until December 31, 1922.

(Signed) Edward J. Hanna, C. F. Michaels, H. U. Brandenstein."

Craft	Journeymen
Asbestos workers	\$7.00—journeymen."
Bricklayers	9.00
Bricklayers' hod carriers	6.00
Cabinet workers, in shop	7.00
Cabinet workers, outside	8.00
Carpenters	8.00—helpers—

In the other column (continuing reading): "\$6.00; Cement finishers, \$8.00; electrical workers, \$8.00; electrical fixture hangers, \$7.00; electrical hoistmen, \$6.00; Elevator constructors, \$8.00; engineers, stationary, \$7.00; engineers, traveling crane, \$7.50; engineers, on dericks, \$8.00; Glass workers \$7.50; housemovers, \$8.00; housesmiths, architectural iron, \$7.00; housesmiths, reinforced concrete, \$7.00; iron workers, bridge and structural, \$9.00; labor, common (6-day week) \$4.50; laborers skilled, \$5.00; lathers, \$8.00; marble setters, \$8.00; marble cutters and copers, \$7.00; marble bed rubbers, \$6.50; marble polishers and finishers, \$6.00; millmen, planing mill department, \$7.00; millmen, sash and door, \$6.00; millwrights, \$8.00; model makers, \$9.00; model casters \$7.50; mosaic and [fol. 365] terrazo workers, \$7.50; painters \$8.00; painters, varnishers and polishers (shop) \$7.00; painters, varnishers and polishers (outside), \$8.00; plasterers, \$10.00; plasterers' hodcarriers, \$7.00; plumbers, \$9.00; roofers, composition, \$7.50."

DEFENDANTS' EXHIBIT #4

"There undoubtedly is a serious unemployment situation in San Francisco and many of us have gladly gone down into our pockets to help relieve it.

Our own employment department is finding employment for from 50 to 100 men each week, and if we had more high-class skilled journeymen on our lists we could place everyone of them. But there's the rub. There is an increasing demand right here in San Francisco for A1 journeymen in most all of the major crafts. One does not need to be unduly optimistic to say that the biggest building boom San Francisco has known for many years is looming up, and there are not enough skilled mechanics in this city to do the work. There is work enough in this city for all skilled mechanics now located here, and for many hundreds more who are being invited to bring their families and settle down among us.

San Francisco needs the increase in population. San Francisco needs many more skilled mechanics. San Francisco has opened its doors to all journeymen to work as free men; they may belong to a union or they may not. All that is required of them is an honest day's work for a wage that has been adjudged fair by an impartial wage board. It might not be amiss to state our belief that much of the unemployment now existing among the skilled mechanics is due to the fact that the union men are making it so unpleasant [fol. 366] for the non-union men that they refuse to work. This dog-in-the-manger attitude on the part of the unions may prevent non-union men from working on particular jobs, thus causing suffering through unemployment, but it is crystalizing public sentiment against union methods to such an extent that we need have no fear of the ultimate success of the American Plan.

Apprenticeship schools are being organized among the crafts where there is the greatest shortage of journeymen, and these young men coming along in a very few years will help to supply San Francisco with as high class mechanics as may be found anywhere in the country.

The solution of the present unemployment situation is, in brief—

1. Contractors and foremen give every skilled mechanic his chance, and equal protection, whether he is union or non-union.
2. Import a sufficient number of journeymen to handle all the work properly.
3. Pay the new wage scale and fight to see that every other employer pays that scale."

DEFENDANTS' EXHIBIT #5

"In the newspaper accounts of the annual convention of the State Building Trades Council, held last week, we are informed that union men, after a short membership campaign, will refuse to work on any job where a non-union man is employed. This is fair warning enough. The American Plan and the wage scale as handed down by the Impartial Wage Board is to be thrown in the discard.

From many sources comes the warning that after April 1st no non-union men will be permitted to work in San Francisco or the [fol. 367] Bay District.

Are we going to prepare to answer this ultimatum from the organized forces of labor? We shall see."

"The functions of the Board as defined by the terms of its appointment are limited to the establishment of proper differentials in the wages paid to the various crafts which will involve readjustments rather than general flat increases or decreases in all wages."

DEFENDANTS' EXHIBIT No. 6

"Arbitration Agreement—Builders' Exchange and Building Trades' Council

1. In the matter of arbitration between the Builders' Exchange and the Building Trades' Council, we hereby accept the following three arbitrators, to wit: Archbishop E. J. Hanna, Max C. Sloss, ex-Associate Justice of the Supreme Court of California, and George L. Bell, Consultant in Industrial Relations and Management.

2. It is understood that all three arbitrators are to be deemed impartial arbitrators of all controversies, and under no circumstances is any one of them to be deemed or considered a representative on the Board of Arbitration of either of the contending parties.

3. It is agreed that this Board shall sit as a continuing Board of Arbitration to which shall be submitted all disputes as to hours, wages, and working conditions in building trades where there are no disputes now, as well as in those where there are, when and as such disputes arise between the signatory parties and that the decisions of this Board shall be accepted as final and carried out by all [fol. 368] parties. This step is taken in order to provide a permanent method of settling amicably and in a reasonable manner labor disputes in this city affecting the building trades, and with the hope that building operations henceforth may be put on a certain and stable basis—a result which will be of advantage to the workers, to the employers, and to the public.

4. It is also agreed that the Board of Arbitration may go into all questions concerning the general building situation and call upon the signatory parties for information and copies of contracts of agreements concerning any phases which the Board desires to investigate.

5. It is further agreed that the Board of Arbitration may incur such expenses as it deems necessary for the employment of investigators and clerical assistance; and that the entire expense incurred by the Board shall be shared equally by the signatory parties.

6. It is understood that all hearings of the Board of Arbitration are to be conducted as public sessions, save and except such special hearings as in the judgment of the Board should be held in executive session.

7. It is understood and agreed that the trades in which there are now disputes concerning hours, wages and working conditions, which disputes will be immediately submitted to the Board, are as follows: Painters; Glass Workers, Varnishers and Polishers; Cement Finishers; Cement Laborers; Hodcarriers, tending Plasterers; Marble Rubbers and Sawyers; Marble Finishers and Polishers; Marble Masons; Marble Mason Helpers; Hoisting and Portable Engineers; Roofers; Elevator Constructors; Elevator Constructors' Helpers; Reinforced Iron Workers; Team and Auto Truck Drivers; Plasterers.

[fol. 369]

DEFENDANTS' EXHIBIT No. 7

"Temporary Wage Awards in Certain Trades by the Board of Arbitration for San Francisco Bay District Building Industry, March 31st, 1921

The undersigned Board of Arbitration, created by agreement of the Builders' Exchange and the Building Trades' Council herewith announce its temporary awards in the trades in which issues as to wages were submitted for decision. These awards are to continue for a period of six months commencing on April 11th.

Hearings were begun the latter part of January for the consideration of evidence and arguments not only with reference to wages but concerning working conditions and rules, standards of work and other general phases of the building industry. The Board found that both parties had such a mass of material to submit in connection with each trade that a decision could not be reached for many months. The Board felt it could not delay decision in the matter of wages while it went into all the other intricate subjects, because wages have been the subject of controversy since last July and they are naturally of most immediate and vital concern to both parties. Therefore, after the full presentation of the evidence in the rather involved issues in the Painters' trade, the Board suspended the hearings and had the parties submit in writing their contentions in the other trades as to the wage issue only. The evidence was not completely turned in until March 28th, 1921.

With wages fixed for a definite period, this Board, which is a continuing one, will make a thorough study of general conditions in the industry. The Board desires, the continued co-operation of both [fol. 370] parties and the public to develop some scientific studies of operating methods and practices so that there may be made available more facts and clearer principles for the fixing of wages and working conditions and for the constructive development of the Industry. To the public at large, as well as to the industry itself, such matters are of much more fundamental importance than the establishment of these temporary wages.

In making these temporary awards, the Board has had to do its best with the facts at its command and the time at its disposal. The parties to the controversy have presented requests for flat increases or decreases respectively, without presenting detailed or specific reasons to justify such specific requests."

"On the question of skill, as an element to be considered in determining wages, the evidence so far offered is inconclusive. In fact, neither side furnished any definite principle or method for applying this important factor in fixing a wage scale. The important fact in this regard is that the wage scales for these trades remained in effect from 1907 to 1917 with substantially the same differentials between crafts. It is entirely reasonable and fair, therefore, to hold largely to these differentials that were established and maintained by mutual consent for some ten years until a better basis of adjustment is de-

terminated through more adequate investigation. Voluminous arguments have been presented concerning budgets, standards and cost of living. The field of inquiry thus presented called for more extended consideration than has been possible up to this time. For present purposes, the Board has limited itself to the most recent available government figures showing the increase in cost of living since 1914. [fol. 371] This increase has been the principal factor in fixing these temporary awards. In an agreement between the Building Trades' Council and the Building Industries Association, the predecessor of the Builders' Exchange, made in February, 1920, both parties accepted this principle of changing wages from time to time with the changes in the cost of living.

The U. S. Bureau of Labor Statistics, in its latest published report, announces that the cost of living in San Francisco has increased 85 per cent from 1914 to January 1, 1921. In 1914 the lowest wage paid to any of the trades under consideration was \$3 a day. By applying this 85 per cent increase in costs, we find that the wage of corresponding purchase power is 5.55. In this particular trade the wage increase to date has been 100 per cent. Therefore, a reduction of $7\frac{1}{2}$ per cent of the present wage is necessary to equalize the wage with the cost of living. The workers in this trade are today receiving \$6 per day. The reduction of $7\frac{1}{2}$ per cent involves a reduction of 45 cents per day.

This Board has applied this $7\frac{1}{2}$ per cent reduction, determined as outlined above in the lowest paid or marginal craft, to the other trades here involved. If the 85 per cent increase over 1914 were applied in all of the trades, the differentials between the crafts would be entirely upset, inasmuch as the increases mutually agreed upon by the parties since 1914 have been flat increases, rather than percentage increases, and have not consistently followed the same principle of increase as the marginal craft. As stated above, the facts concerning relative skill and other important factors are not at hand to enable the Board to change appreciably these differentials to any greater extent than by this general $7\frac{1}{2}$ per cent reduction.

[fol. 372] It may be argued that the cost of living has decreased further since January 1st, and that it is unfair, therefore, to give the workers the full benefit of the latest published findings of the U. S. Department of Labor, which unfortunately are published three or four months late. In taking the ratio of increase up to January 1st, as the basis for its action, the Board has been guided by the following considerations:

1. Wages for the next six months cannot be predicted upon estimates or rumors of present fluctuations or upon prophecies of further fluctuations in the cost of living.

2. It is desired to establish acceptance of these regularly published Government findings as a permanent principle in the industry. Even though reduction from this published index figure would benefit the workers, it is obvious that in a period of rapid increase in the

cost of living the use of this figure would temporarily work to the advantage of the employer. It is only by the adoption of the periodic findings of such a recognized authority as the United States Department of Labor that the advantage in one period can be made to balance the disadvantages in another period.

3. Cost of living in connection with wages are of relative value only, and must be considered in connection with the last wage increases or decreases. Wages in the trades in question have not been changed for approximately a year. Consequently, wages did not follow the cost of living up to the peak reached in June, 1920, and obviously would not be equitable to apply arbitrarily the percentage of decline, reported by the government to be 10 per cent and a fraction, from that peak point to January 1st, 1921.

The Painters: The case of the painters is complicated by a controversy over an agreement claimed to have been made in July, [fol. 373] 1920, between the Master Painters' Association and the District Council of Painters. The Board finds that, although the employing painters believed that any agreement reached was subject to the confirmation of the Builders' Exchange, they did fail in making this qualification entirely clear to the union representatives. Furthermore, their later actions gave the men good reason to believe that this agreement was a 50 per cent wage increase, was regarded as binding.

In collective bargaining there is no principle more fundamental to the justice and public welfare than the integrity of contracts. The Board believes that no charge of bad faith can be upheld. At the same time, the men relied, with good reason, upon what they thought was a valid agreement for an increase. Accordingly, in applying the $7\frac{1}{2}$ per cent wage reduction to the painters' trade, the Board used the \$9 a day rate, to which they were entitled under the terms of the agreement, rather than the \$8.50 per day which they are now receiving. In this way the painters are fully compensated for the loss incurred in not receiving the 50 cent wage increase during the six months period from January to July 28—from July 28, 1920, to January 28, 1921, covered by the disputed agreement.

The plasterers and hodcarriers, tending plasterers: The evidence in the plasterers' case was not completely submitted to the Board until March 24, 1921. The dispute involves alleged breach of faith by both parties. There are also certain grave questions of trade practice which the Board deems too important to the public welfare to decide without further testimony presented at open hearings.

The plasterers, therefore, are not included in this temporary award. Their present wage shall continue in effect during such time as it [fol. 374] requires for a full consideration and hearing of the case. Likewise full evidence concerning hodcarriers, tending plasterers, has not been introduced, and their present wages will stand pending further hearings.

The new wages to go into effect on April 11th are shown in the following table:

Table of Wage Scales in 16 Building Trades.—Craft, 1907 to 1914, the wage was: Roofers, \$6; present wage \$9; wage award of Arbitration Board \$8.35; marble polishers, 1907 to 1914 the wage of marble polishers was \$3.59; present wage \$6.50; wage award of the Arbitration Board \$6; bed rubbers, 1907 to 1914 wage was \$4; present wage \$7; wage award of the Arbitration Board \$7.05; cement laborer, 1907 to 1914 \$4, present wage \$7.50; wage award of the Arbitration Board \$7.05; glass worker, 1907 to 1914 \$4.50, present wage \$8.50, wage award of the Arbitration Board \$7.85; truck driver, 1907 to 1914 \$4, present wage \$7, wage award of the Arbitration Board \$6.50; team driver, 1907 to 1914 wage \$4, present wage \$7, wage award of the Arbitration Board \$6.50; team driver, wage from 1907 to 1914 \$3, present wage \$6, wage award of the Arbitration Board \$5.55; varnisher and polisher, inside, 1907 to 1914 \$4, present wage \$7.50, wage fixed by the Arbitration Board \$6.95; outside varnishers and polishers, 1907 to 1914 wage \$5, present wage \$8.50, wage award of the Arbitration Board \$7.85; marble cutter, first wage—"I think that will be a simple way of reading it"—\$4.50, present wage \$7.50, wage award of the Arbitration Board \$6.95; marble setter, first wage \$5, present wage \$8, wage award \$7.40; marble helper, first wage \$3, present wage \$6, wage award of the Arbitration Board \$5.55; elevator constructor, first wage \$5, present wage \$8.50, wage award of the Arbitration Board \$7.85; elevator helper, first wage \$3, present wage \$6, wage award of the Arbitration Board \$5.55; cement finisher, \$3 first wage, present wage \$9, wage award of the Arbitration Board [fol. 375] \$8.35; painter, 1907 to 1914 wage \$4.50, present wage \$9, wage award of the Arbitration Board \$8.35; iron worker first wage \$5, present wage \$8.50; wage award of the Arbitration Board \$7.85; hoisting and portable engineers, first wage \$6, present wage \$9, wage award of the Arbitration Board \$8.35.

The Board confirms the agreement of July 24, 1920, the terms of which were never made effective, and therefore figures its award on \$9 instead of the \$8.50 wage now actually being paid.

In setting the award, the actual amount determined by applying $7\frac{1}{2}$ per cent reduction to the present wage was brought to the even 5 cents nearest it."

And this was signed at the end by the arbitrators, Archbishop Hanna, Judge Sloss and Mr. Bell.

DEFENDANTS' EXHIBIT No. 8

In the Matter of the Arbitration Between the Building Trades Council
and the Builders' Exchange

To the Honorable the Board of Arbitration:

The undersigned, the Building Trades' Council, one of the parties to the above arbitration, hereby respectfully moves the said Board to reconsider its decision and award rendered on the 31st day of

March, 1921, and to vacate and set aside the same for the reasons and on the grounds following to-wit:

1. That the said decision and award is not within the issues presented to the said Board, but is without the said issues in this:

That a request had been made for an increase in wages in the following fifteen crafts: Painters, Glass workers, varnishers and polish-[fol. 376] ers, hoisting and portable engineers, reinforced iron workers, elevator constructors, elevator constructors helpers; cement finishers; cement laborers; felt and composition roofers, building material teamsters, marble masons, marble cutters and carvers, marble polishers and bed rubbers, marble masons helpers, which said request for an increase was opposed by the Builders' Exchange, the other party to the said arbitration.

That thereupon the said parties agreed to submit to the said Board the question of whether the said request for an increase of wages should or should not be granted, and that the only issue as to the amount of wages submitted to the said Board was whether the said request for an increase should or should not be granted, and that the said Board had no jurisdiction or authority to award a decrease of wages in any of the said fifteen crafts.

2. That the opening general argument of the said Building Trades' Council was submitted to the said Board and to Mr. John S. Partridge, attorney for the said Builders' Exchange, on the 25th day of January, 1921, and that the reply thereto of the said Builders' Exchange was served upon and submitted to the Building Trades' Council on the 25th day of March, 1921, and that the said decision and award was made before the said Building Trades' Council had the opportunity to examine and answer the said reply of the said Builders' Exchange, and that it is most material to the matter in arbitration and to the rights of those affected thereby, that the said Building Trades' Council should be given the opportunity to answer the said reply.

3. That the said Building Trades' Council has not yet closed its case in the matter of the said fifteen crafts.

Wherefore the undersigned respectfully prays that the said Board shall set a time and place for the hearing of this motion, and that the said award shall not take effect until this motion is heard and [fol. 377] determined.

Dated this first day of April, 1921.

Building Trades' Council, by F. C. MacDonald.

DEFENDANTS' EXHIBIT No. 9

Supplementary Wage Award and Decision on Petition for Rehearing of the Building Trades' Arbitration Board

Immediately after the announcement of the temporary wage award of March 31st, 1921, the Building Trades' Arbitration Board was petitioned by the Building Trades' Council for a reconsideration of its decision on the grounds that the Board had no jurisdiction to award a decrease of wages in any of the said crafts, and that the Council had not had time to answer the reply of the Builders' Exchange on the matter of Cost of Living.

After a full consideration and hearing of this petition, the members of the Board of Arbitration are unanimously of the opinion that the award should not be withdrawn or reconsidered.

The Arbitration Agreement signed by representatives of both parties under date of January 18th, 1921, submits to the decision of the Board in the broadest terms "all disputes as to the hours, wages and working conditions in building trades where there are no disputes now, as well as in those where there are, when and as such disputes arise between the signatory parties, and that the decision of the Board shall be accepted as final and carried out by all parties." The Agreement also authorizes the Board to "go into all questions concerning the general building situation."

It is true that the controversies in fifteen of these particular crafts were precipitated by demands of the Unions for increases [fol. 378] last July, and in the remaining two crafts by demands of contractors in September for decreases. It is probably also true that in the preliminary meetings and discussions looking to arbitration, both parties had in mind, as the predominant issue, these respective increases and decreases. However, the Board was not organized until about the middle of January, 1921, and in the meanwhile conditions had changed greatly, and the signed agreement under which the Board came into existence represented the final result of a long series of discussions and negotiations in the course of which many new factors had been introduced. Under this agreement it seems to us clear that the Builders' Exchange was entitled, either during the course of the hearings or immediately after the termination thereof, to raise the issue of a decrease in all seventeen trades.

During the presentation of the evidence this issue was raised and there was nothing in the course of the procedure followed by both parties in the presentation of their case, to indicate that the issues were intended to be limited as is now suggested. Nor did the Building Trades' Council in its replies to statements and arguments filed by the contractors, make the point that the Board had no right to consider the requests for decreases made in these statements and arguments.

The award is a temporary one and does not undertake to dispose finally of any of the issues presented. It was, as shown in its face,

not based upon conflicting evidence of budgets and living costs, but was reached upon a consideration of the official data published by the United States Bureau of Labor Statistics. Any additional evidence which might have been produced could not have affected this basis.

The Board, in its former decision, did not dispose of the questions arising with respect to the Plasterers and Hod Carriers (tending [fol. 379] plasterers). Further study of the case has satisfied the Board that since September, 1920, the prevailing wage for Plasterers has been \$11.00 a day and for Hod Carriers (tending plasterers) \$9.00 per day. For the same reason applicable to the trades covered by our former award, these wages should, for the period of six months from the effective date of our award, be reduced by $7\frac{1}{2}\%$; that is to say, the wages of Plasterers shall be \$10.20 per day and of Hod Carriers (tending plasterers) \$8.35 per day.

The wage scales fixed by the award of March 31st, 1921, and by this supplemental award, are to be effective for a period of six months beginning May 9th, 1921.

After this decision was reached today, the Building Trades' Council served notice that the Unions would not be bound by any decision decreasing wages. The Board, nevertheless, feels that, in order that it may fulfill its duty to the public, it must render its decision, and that the responsibility for accepting or rejecting the award rests upon the parties to the Arbitration Agreement.

(Signed) Edward J. Hanna, M. C. Closs, George L. Bell.

DEFENDANTS' EXHIBIT No. 10

Minutes of June 2nd, 1921

W. H. George presented the following resolution:

Whereas, the Builders' Exchange of San Francisco and the Building Trades Council of San Francisco voluntarily executed an agreement referring to a Board of Arbitration mutually selected by them, all differences regarding wages, hours and working conditions in the building business; and

Whereas, the Board of Arbitration commenced its labors by investigating the disputes in seventeen crafts, and reduced wages in [fol. 380] these seventeen by $7\frac{1}{2}\%$ per cent; and

Whereas, after the award, the Building Trades Council repudiated the arbitration agreement, and has, since May 9th, refused to permit its members to work under the wages fixed by the Board of Arbitration; and

Whereas, the Builders' Exchange has waited nearly four weeks with the hope that the officers of the Building Trades Council would on further consideration recognize their error and yield to the award of the Board; in the meantime building work has almost completely ceased in San Francisco, much capital invested in buildings under

course of construction has remained idle, and much needed building work been deferred; and

Whereas, any further negotiations with the officers of the Building Trades Council are impossible after such a breach of faith on their part; and

Whereas, building operations cannot permanently be suspended in San Francisco because of the repudiation of the Arbitration Award by the Building Trades Council.

Now, therefore, be it resolved, that all contractors and other affiliated with the Builders' Exchange and its various craft organizations will on Monday morning, the 13th day of June, 1921, commence building operations in the City and County of San Francisco, and the Counties of Alameda, Marin and San Mateo, and the cities of Richmond and Vallejo under the wage scale fixed by the Arbitration Board.

Be it further resolved, that inasmuch as the Arbitration Board, in reducing the wages of certain crafts $7\frac{1}{2}$ per cent, based its decision exclusively upon the element of reduced living costs, which living costs affect alike all who work, a similar reduction of $7\frac{1}{2}$ per cent be made in the wages of all other building crafts in order [fol. 381] that the reduction made by the Arbitration Board may be uniform and not discriminatory as between the crafts.

And be it further resolved, that hereafter eight hours shall constitute a day's work; five and a half days shall constitute minimum week's work; that time and a half shall be paid for all overtime.

Be it further resolved, that upon the commencement of building on the 13th day of June, 1921, employment be offered to all artisans, mechanics and laborers qualified in the respective crafts whether or not they belong to any organization or Union.

Be it further resolved, that public notice be given that all men ready and willing to go to work on Monday morning, June 13th, 1921, be requested to register on or before Friday evening, June 10th, 1921, either at the Builders' Exchange employment office or with their last employer.

Moved, seconded and carried unanimously that the Resolution, as presented, be adopted and put in effect.

PEOPLE'S EXHIBIT No. 38

"The Builders' Exchange of San Francisco, San Francisco.

GENTLEMEN: We hand you herewith copy of letter addressed to the Building Trades Council of San Francisco by Honorable Ralph McLeran, Chairman of the Finance Committee of the Board of Supervisors of San Francisco.

The request contained therein received our most careful consideration and I have been instructed to notify you that while the Building Trades Council of San Francisco still maintains that the Board of

Arbitration exceeded its authority in its decision dealing with the arbitration disputes, and because of that fact the Building Trades [fol. 382] Council was not in honor bound to obey such decision going beyond the issues, yet in the interests of industrial peace and the welfare of San Francisco, the Building Trades Council is willing, for the reasons hereinbefore mentioned, to accept the decision of the Board of Arbitration, and does hereby accept same.

Very truly yours, A. G. Gilson, Acting Secretary Building Trades Council of San Francisco."

PEOPLE'S EXHIBIT No. 39

"An Open Letter from the Builders' Exchange of San Francisco

"The tardy and ambiguous letter of the Building Trades Council is utterly inadequate as a basis for the resumption of any further negotiations.

Despite its protestations of good faith and the best interests of the city, the Building Trades Council very adroitly accepts only the present decision of the Arbitration Board; it remains significantly silent as to whether it will accept the full jurisdiction of the Arbitration Board as it agreed to do on January 31st last, and will concede its right to make further revisions in hours, wages and working conditions.

Nothing less than an explicit, unqualified acceptance in full of all the terms of the arbitration agreement and of the full and complete jurisdiction of the Arbitration Board, properly signed by the regular officials of the Building Trades Council, could have been considered.

Builders' Exchange of San Francisco, by Charles W. Gompertz, President."

[fol. 383]

PEOPLE'S EXHIBIT No. 40

"Charles H. Gompertz, President Builders' Exchange, San Francisco.

DEAR SIR: It has been drawn to our attention that certain contractors have been told that the Builders' Exchange was not notified of the action taken by the Building Trades Council on Thursday, June 9, 1921, with reference to the award of the board of arbitration. The Builders' Exchange was notified on Friday the tenth instant of the action of the Building Trades Council.

On Saturday, the eleventh, the following advertisement, over your signature, appeared in the newspapers:

An Open Letter from the Builders' Exchange of San Francisco

The tardy and ambiguous letter of the Building Trades Council is utterly inadequate as a basis for the resumption of any further negotiations.

Despite its protestations of good faith and the best interests of the city, the Building Trades Council very adroitly accepts only the present decision of the Arbitration Board; it remains significantly silent as to whether it will accept the full jurisdiction of the Arbitration Board as it agreed to do on January 31st, last, and will concede its right to make further revisions in hours, wages and working conditions.

Nothing less than an explicit, unqualified acceptance in full of all the terms of the arbitration agreement and of the full and complete jurisdiction of the Arbitration Board, properly signed by the regular officials of the Building Trades Council, could have been considered.

Builders' Exchange of San Francisco, by Charles V. Gompertz, President."

[fol. 384] That the contention raised in your advertisement of Saturday be dealt with by the Building Trades Council, the Building Trades Council at a special called meeting held on Saturday afternoon June 11th, 1921, adopted and ordered forwarded to the Exchange through you the following statement of the position of the Building Trades Council:

'Feeling it a solemn duty to inform the public of the precise position of the Building Trades Council in the present controversy, the Building Trades Council hereby accepts the award of the Board of Arbitration heretofore rendered.

The Building Trades Council hereby accepts the full jurisdiction of the Arbitration Board as it agreed to do on January 21, 1921, and reaffirms said agreement including the right to make further revisions in hours, wages and working conditions.

The position of the Building Trades Council is that the interests of San Francisco stand first and that arbitration is the servant of peace and prosperity.'

Saturday afternoon and Sunday the Council endeavored to get into communication with you for the purpose of delivering to you personally a copy of this statement. Not succeeding in its attempt, the Council mailed to the office of the Builders' Exchange a copy of this statement and also furnished copies to the press.

Until last night we believed that you had received such copy of the statement and that you and the Builders' Exchange were fully aware of the action taken by the Building Trades Council, as hereinbefore set forth.

We are transmitting a copy of his letter to the president of the Chamber of Commerce and a copy to each of the members of the Board of Arbitration.

Yours sincerely, Building Trades Council of San Francisco.
P. H. McCarthy, President. A. G. Gilson."

[fol. 385] TESTIMONY OF W. P. PAYNE ON BEHALF OF COMPLAINANT

W. P. PAYNE, called as a witness on behalf of complainant, was sworn and testified as follows:

I am General Manager of the Jumbo Plaster & Cement Company and have been for 15 years. It is a corporation organized in Utah and located at Sigurd, Utah.

As President and Manager of the Jumbo Plaster and Cement Company, I had dealings with James A. Gray from the month of April to the month of August, 1922. We shipped hardwall plaster to him at San Francisco, Oakland and other points all in California. He ordered hardwall plaster that we did not ship. These orders were also for delivery in California to San Francisco, Oakland and the vicinity. In 1923 Mr. Gray placed an order with us without any destination whatever. It was accepted in this way: We started to fill the order when conditions arose at the plant so that we could not fill it and he was notified to that effect. We did not tell him we would fill the order—he just sent the order in and there was no acceptance. We just started to fill it. I do not know whether or not I made any price quotation to him about April 21, 1922. If I did, I did not fill all of those orders. I was notified by Mr. Gray about April, 1922, and again in May and June that he had deposited with the Peterson Bank at Richfield \$1,104 for 20 tons of plaster to be delivered. I notified James A. Gray after that deposit was made that he might draw down his deposit as I could not make deliveries to him. The deposit might have been made in reply to my quotation of \$8.00 a ton f. o. b. Sigurd. After receiving that order for those 20 tons, I met William H. George, President of the Builders' Exchange San Francisco. It was after I had spoken to Mr. George that the order was turned down.

On cross-examination the witness W. P. Payne testified as follows: [fol. 386]

I first met Mr. Gray in 1921. At that time, we were not shipping any hardwall plaster into Northern California. I started in doing business with him then—shipped goods to him. Permit or no permit, I shipped goods to him for a year or more. In the Spring of 1922 in April a flood filled our canal with mud and rock and we were shut down in the neighborhood of 3 or 4 weeks. After we had conquered our flood difficulties, one of our calcine kettles went down on us. That kept us shut down in the neighborhood of 3 weeks. This occurred in the springtime—the period of April, May and June 1922. Our plant had no representation here in 1922—no means of distribution in Northern California.

I paid a visit to California in 1922 seeking representation here. Alexander Gray represented himself as being in the building material business. I made some inquiries as to him. I saw him to find out what kind of a distribution source he would be for Northern California. When I came to California in the summer of 1922 I

found that as near as I could learn, Mr. Gray was not an established dealer here. I made some investigation along that line and that is what I learned. Mr. Gray had no plant that I know of—no equipment, warehouse or facilities for the sale of our commodities that I know of. Thereafter, I established a general distributing agency for Northern California with the Henry Cowell Lime and Cement Co., and since that time have been shipping continuously into the state.

On re-direct examination the witness W. P. Payne testified as follows:

Mr. William H. George is the Manager of the Henry Cowell Lime & Cement Co. I cannot give you the names of the persons from whom I found that Gray was not an established dealer. I just simply made inquiry as to his standing here and could not find any. Mr. George did not tell me that. It was not within 24 hours after I saw Mr. George that I determined not to ship to Mr. Gray. I met Mr. George on June 30th or July 1st. I do not recall that I ever spoke to Mr. Gray about handling our output. I asked Mr. Gray if he had a plant or equipment. I met him at the Alexander Hotel and asked him what his condition was to become the general distributor for Northern California. He said, "I feel a little ashamed that I have not let you know just what my name is." He handed me his card. His right name is James A. Gray. He told me he called himself Alexander Gray because he was afraid I would not ship him material. He mentioned some labor trouble here and said that that was the reason. His words were to the effect that he was afraid the Builders' Exchange would not let me ship to him. I did not after talking to him tell him he could handle our cement in California. After this conversation with Mr. Gray, I did not accept orders from him. I shipped him though. I do not think I accepted any orders. If I remember right, I shipped him one car. He had money on deposit at that time.

In order to handle our goods, the plant necessary would be a warehouse that would hold two or three carloads of material, and not only in one place but in other localities, and also a sales force. The output we could spare for California varies. With all of my California business here I have always told them that I expected to take care of Utah and Idaho first and the surplus could come to this point. If our orders were slack in Utah and Idaho, we might ship maybe a car a day. If the Utah and Idaho orders were demanding it, we might not be able to ship any. During the last two or three years our average shipment to California was in the neighborhood of ten cars a month.

[fol. 388] During my conversation with Mr. Gray, I was called on the telephone by my niece in San Francisco. I was not called by any one at that time asking me to go to the Builders' Exchange. I did not tell Mr. Gray that I had to go to the Builders' Exchange. I told Mr. Gray that I had a telephone call from one of my nieces. I did not see Mr. George after leaving Mr. Gray on that day. I was

within 20 or 30 minutes of leaving San Francisco. It was in the neighborhood of a week before I came back.

It was several months after I cleaned up our flood damage that I made my first trip to San Francisco. The flood damage was cleaned up on June 19, 1922. I came to San Francisco on June 30, or July 1st. It was about a week or two after the damage was cleaned up that I made my first trip to San Francisco. I saw Mr. Gray on that trip. That is the time also that I saw Mr. George. I was about four weeks cleaning up that flood. We got it cleaned up on June 19th.

Our average daily output is about 80 tons. From the 19th of June and afterwards, our daily output was the average. During the flood period, our output was cut down a little better than half. After that, we sent some of our output to California, during the month of July. I sent them to Alexander Gray, Gray Thorning, and Henry Cowell Company. In that month I sent one car to Alexander Gray. It was in that month I told Alexander Gray that he might as well draw down his deposit—that I would not be able to fill his order.

After I gave the Henry Cowell Lime & Cement Co. the general distributing of Northern California, I considered that all other orders would cease and from that day on everything was to be shipped through the Henry Cowell people. It did not make any difference whether they had been ordered to make deposit and the orders accepted or not. In conversation with Mr. George, the permit system of [fol. 389] the Builders' Exchange was just merely mentioned. That is a matter I did not enter into and do not care anything about. I do not know in what connection he mentioned it. He merely said they were under a permit condition here. That is a matter I didn't enter into and it didn't interest me. I think he told me he would procure those permits so that I could ship to him.

On recross-examination the witness, W. P. Payne, testified as follows:

It is a custom in my business and in all manufacturing businesses that in locations where the factory has no office of its own, it gets representation, and it is my custom and the custom of my concern of getting representation in the different states and localities. I understand that this is true of practically all manufacturing lines of business, and particularly in the building trades. When I open account with a concern, I am guided by the facilities that concern has to dispose of our goods. I knew, or learned, that the Cowell Lime and Cement Co. had offices throughout California. I gave them our exclusive business for Northern California. This is the custom with practically all of the plaster and cement and other building material manufactures when they come into California or go anywhere where they themselves have not their own offices.

On re-direct examination the witness, W. P. Payne, testified as follows:

I had no trouble with the Henry Cowell Lime & Cement Co. prior to the time that this agency was given. They represented me before.

I took the representation away for the simple reason that I had all I could see to in Utah and Idaho. That is the only reason. I had no discussion with them regarding filling our sacks with other cement.

In shipping our goods to the Henry Cowell Lime & Cement Co., I follow out their instructions whether the goods go to them direct or [fol. 390] send it to their customers. Whatever their shipping directions are, we follow them. It is sometimes shipped out direct and sometimes it is shipped to their customers.

I shipped certain lime or plaster to Gray. There was an order for 20 tons placed with us and the money deposited. Some of that order we did not fill. The reason we did not fill it was because of conditions at the plant. We had three conditions there that put us to the bad. The first one was a flood; the second one was our calcine kettle; the third one was that our turbine wheel went back on us. I have both steam and water power. That is the reason that conditions arose at the mill that prevented my filling that order, and being behind with our orders, in Utah and Idaho. When these conditions were alleviated and our plant was running normally, we made arrangements with the Henry Cowell Lime Company to act as distributors, and having made that arrangement we declined or failed to fill that order because of the new condition of having a distributor here on the ground. I did not decline to fill the order until after I had made the Cowell people the general distributors in Northern California. The order was not filled in the first instance because of the conditions at the plant, and in the second instance because we had secured the distributing agency out here and cancelled all orders except those received through that agency. This is with the exception of two cars, I think, one car I sent to Gray Thorning and one to Alexander Gray. The orders I referred to were not accepted orders, simply orders sent in. None of them had been accepted by us. That refers to the Gray orders. All the orders were under the same condition as in the Gray case. Request was made of me for a price. The price sent on by me, and a letter was sent to me asking for the original amount asked at the price I quoted. That is all in writing in these cases. In this particular case, the money was actually deposited [fol. 391] so that I could draw it against my shipment. I have received a number of letters since July, 1922, requesting that we fill orders or accept orders in and around San Francisco. I have referred them to the Henry Cowell Lime & Cement Company as being our distributors. That is the only reply I have given to any of them.

TESTIMONY OF WILLIAM J. FEARY ON BEHALF OF COMPLAINANT

WILLIAM J. FEARY, called as a witness on behalf of complainant, was sworn and testified as follows:

The firm which I represent is a member of the Builders' Exchange. I am not personally a member. I have dealings with the Builders' Exchange of San Francisco and with the members of it. As a member of the Exchange, we used that as a convenience in our business to meet our trade.

I am Secretary and Manager of the Western Lime & Cement Company and the Holmes Lime & Cement Company. I do not personally represent the Nephi Plaster Company. My firm does. The Western Lime & Cement Company does. They do not represent the Horton Lime & Cement Company. They have not represented the Holmes Lime & Cement Company recently. I have been in this business about 17 years. My company has a warehouse in San Francisco, in size probably 150 x 100 feet. It would hold probably 10 to 15 carloads of lime or cement. We usually carry half its capacity. It would average about 5 carloads. Sometimes we haven't any and other times it is filled up. We often receive orders for shipments amounting to one carload or more. Our custom on large orders—on orders for a carload or more—is this: It is shipped directly to the person making the order, and sometimes it is shipped to the warehouse and then distributed to the person giving the order. There are different ways. There is no set way of doing it. We don't re-ship from the warehouse. Sometimes we [fol. 392] put it in the warehouse and then take it out again, but not always. This is true though we have the order in advance. What we do would depend on the condition of the order placed. Sometimes an order might be placed for a carload of material and before the car arrived I would fill that order out of my warehouse and then when the car came in I would divert it to the warehouse rather than ship it direct to the person. It would depend on conditions arising. It does not happen often—it depends; sometimes a job might not be ready, the car would not arrive, for instance, before the job was ready.

In referring to Nephi plaster, we ship both ways—directly to the purchaser, or we also have it shipped to our warehouse, unloaded and then reloaded and shipped again. It depends on conditions as to the order placed. In my business 75 per cent of the material goes through the warehouse, 75 per cent of orders of a carload or more. 25 per cent is shipped direct to the purchaser.

With regard to that which goes through the warehouse, it sometimes happens that we originally order it shipped to the purchaser and afterwards have it diverted to the warehouse. This would happen in the case where we have it supplied out of the warehouse. My warehouse is so conveniently located that the trade to which I ship prefers to have it come from the warehouse and haul from there.

On being recalled by complainant, W. P. PAYNE identified the following letters, which were introduced in evidence:

(Letterhead of Jumbo Plaster & Cement Co.)

"Sigurd, Utah, July 21st, 1922.

Gray Thorning Lumber Company, Redwood City, Utah.

GENTLEMEN: We have just received check from bank of Italy [fol. 393] of your city No. 849526 dated July 18th for \$439.60 for

which please accept our thanks. We also received your letter of July 18th placing order with us for forty tons of our "Alabastite" Fibered hardwall.

Our Utah and Idaho orders have recently increased to such an extent that we have had all we could do to take care of them and you know it is a hard proposition to turn down an eleven dollar for an eight dollar price at a loss of three dollars per ton. If you remember the writer told you we would have to take care of our Utah and Idaho trade for the extra 'velvet' we might get out of it so date of shipment to you is very indefinite.

Thanking you for past favors, we remain,

Respectfully yours, Jumbo Plaster & Cement Company.
W. P. Payne, Mgr."

(Attached to the letter is the following:)

"No. 185. Credit Memorandum

Sigurd, Utah, July 21st, 1922.

Jumbo Plaster and Cement Co., Manufacturers of Alabastite Plaster

"To Gray Thorning Lumber Company, Redwood City, Calif.:

We have this day credited your account as follows:

With check No. 849526 on account.....	\$439.60
With collection charges .....	.40
Total	\$440.00

"Thank you'."

(Letterhead of Jumbo Plaster & Cement Co.)

"Sigurd, Utah, Aug. 4th, 1922.

Gray Thorning Lumber Company, Redwood City, California.

Attention Mr. Thorning

GENTLEMEN: We have your letter of July 31st and assure you we were pleased to receive same but regret to say that owing to the fact that one of our calcining kettles went bad and had to be replaced and owing to the increased Utah and Idaho orders we have on file and being behind on account of this kettle delay it will be a long time before we will be able to ship to you. I feel that this is our duty to tell you so that you can arrange for plaster from another source. There has been an exceptionally heavy demand for our material in Utah and Idaho this season which has cut our surplus down very low, and the fact of the matter is we are behind with our orders with everybody.

With kind regards, I remain,

Respectfully yours, W. P. Payne, Mgr. Jumbo Plaster & Cement Company."

[fol. 394] (Letterhead of Jumbo Plaster & Cement Co.)

"Sigurd, Utah, Sept. 27th, 1922.

Gray Thorning Lumber Company, Redwood City, Calif.

GENTLEMEN: In answer to your letter of Sept. 13th will state that conditions here at our plant are such that we may as well be shut down entirely if the present regulations are carried out as the railroad company has notified us that we cannot get any more box cars. It is hard to tell what this strike will end in before it is settled.

No doubt it will put a crimp in all business. The writer expects to be in your part of the country soon if conditions with the railroad company open up and will call on you at that time but just at present I do not think it would be advisable to depend upon us for any plaster.

Respectfully yours, Jumbo Plaster & Cement Company. W.
P. Payne, Mgr.

STIPULATION RE EVIDENCE

It was thereupon stipulated to by and between Counsel—

(1) That the letter dated July 11, 1923, from the Sandusky Cement Company to William H. George, together with the latter's reply of July 17, 1923, was sent;

(2) That the Sandusky Cement Company was elected to membership in the Builders' Exchange on August 1, 1923, and never theretofore had been a member. That George P. Schwaab was elected a member April 17, 1922, and resigned August 9, 1923. That the Sandusky Cement Company asked leave to have the membership of George P. Schwaab transferred to George L. Brown, but this was refused. Thereupon the Cement Company took out its own membership on August 1, 1923.

(3) That the following defendants are members of the Industrial Association of San Francisco:

Industrial Association of San Francisco.

Geo. H. Tay Co.

Pacific Portland Cement Co.

Henry Cowell Lime and Cement Co.

Santa Cruz Portland Cement Co.

[fol. 395] Holmes Lime and Cement Co.

Gladding McBean and Co.

McNear Brick Company.

Western Lime and Cement Co.

Otis Elevator Co.

P. E. O'Hair Co.

W. P. Fuller & Co.

Wolverine Brass Works.

Dalziel Moller Co.

Crane Company, Inc.
 Grinnel Co. of the Pacific, Inc.
 Emil Hogberg.
 J. D. McGilvray.
 Alex Mennie.
 Charles W. Gompertz.
 J. J. Neal.
 D. B. Farquharson.
 C. S. Allred.
 William P. Goss.

It was further stipulated by and between counsel that the following letter was signed and sent as it purports:

"July 28th, '2.

Mr. George P. Schwaab, c/o Sandusky Cement Co., Hotel Stuart, San Francisco, Cal.

DEAR SIR: Confirming conversation this date, you are hereby authorized to release one Carload of white cement for the Civic Center Supply Company, which was ordered on Permit No. 6835 dated May 10th, 1922.

Assuring you of our appreciation of your interest in this matter, we are,

Yours very truly, The Builders' Exchange of San Francisco.
 ———, President and Chairman of Industrial Relations
 Committee. LEC/EBC."

It was further stipulated to by and between counsel that the following parties are members of the Builders' Exchange:

Geo. H. Tay Co.
 Pacific Portland Cement Co.
 Henry Cowell Lime and Cement Co.
 Tacome and Roche Harbor Lime and Cement Co.
 United States Gypsum Co.
 J. S. Guerin and Co.
 Holmes Lime and Cement Co.
 Nephi Plaster and Manufacturing Co.
 Gladding, McBean and Co.
 [fol. 396] McNear Brick Company.
 Western Lime and Cement Co.
 P. E. O'Hair Co.
 W. P. Fuller and Co.
 Bass Hueter Paint Co.
 Grinnell Co. of the Pacific, Inc.
 William H. George.
 Emil Hogberg.
 R. J. H. Forbes.
 Alex Mennie.
 James H. Pinkerton.
 Charles W. Gompertz.

D. J. Sullivan.
 George R. Perkins.
 Marion D. Cohn.
 D. B. Farquharson.
 C. S. Allred.
 William P. Goss.

TESTIMONY OF CHRIS PETERSEN ON BEHALF OF COMPLAINANT

CHRIS PETERSON, called as a witness on behalf of the complainant, was sworn and testified as follows:

I am a plumbing and heating contractor. I have been in business since 1917. During all of that time, I have been in business in and around the City of San Francisco. I am a member of the firm of C. Peterson & Co. I did belong to the Builders' Exchange of San Francisco at the time of the trouble, but I don't suppose I do now. I really don't know whether there is a specific custom as to the method of shipment to plumbers in carload lots or more. Whenever we have an exceptionally large job and we have plenty of time to wait for the material, we place a carload order in order to get the advantage of the price. We place it with a local jobber. Sometimes we get this carload material out of his stock, and sometimes we get it from the East. When we get it from the East we always receive the bill of lading together with the jobber's invoice notifying us that this bill is payable within ten days from the date of invoice if we wish to discount it at 2 per cent. We pay the jobber. I was referring to rough material. That would be sent the same way unless it would be an exceptional job. It never has been my experience to have an exceptional job [fol. 397] where the material left the manufacturer direct to the job. I have never had a job where the factory sent the carload lot direct to me. I have had real big jobs here. I have had some of the largest. In such a case the finished materials are usually sent from the East I presume to the jobber here locally who puts it in his warehouse and he redistributes from there. I have never received any plumbing material sent direct to me. I could not say that those materials when sent to the warehouse are directed to a particular job because it is in rare cases that we get materials that are really for a specific job. Plumbing fixtures can be used on almost every job.

I remember a conversation with Mr. Atkinson in the office of the United States Attorney. I remember saying, in the case of an order which would be a carload of soil pipe and also of screw pipe, the bill of lading would be made out—as near as I can recall—to us, but together with the bill of lading we received the local jobber's invoice, or rather his bill covering this material. That is the way I handled my business. I have frequently placed orders for a carload lot of soil pipe with a local jobber. We merely hand the order to the jobber and it is optional with him whether he gives it to us out of his stock. He may be over-stocked and give us the carload. We are simply looking for the price. If we have ample time to wait for the

material, he will place it in the East; in due time we are notified that the carload has been shipped, together with his invoice and bill of lading. We are notified by the railroad company or by the steamship company that the cars have arrived and we go down after them. They are unloaded down here and we take them from the wharf or from the car, either one or the other. After we take the material away we put it into our stock.

[fol. 398] On cross-examination the witness Chris Petersen testified as follows:

A carload shipment of plumbing supplies is a pretty big order. The case I have spoken about is an exceptional case. It is a rare case. I am a plumbing contractor. I keep on hand a considerable stock of standard plumbing material. According to modern plumbing methods, most of the plumbing supplies are standard or stock stuff to be used in any job. At the present time, I have 3 or 4 carloads of stuff in my place, of my own stuff. If I want to get material I go to a local jobber and all I am interested in is getting it from the local jobber. I buy from him. He is not my agent in placing an order. In the exception of the case of a whole carload order, he distributes out of his stock, this being optional with him. The only place we get less than carload orders is from the warehouse here. When we get a carload lot we ship that directly from the East. It takes a pretty good sized job to make a carload lot of plumbing material.

On redirect examination the witness Chris Petersen testified as follows:

I get materials sometimes from a boat or a ship. This depends on the freight rate. The freight rate is a little cheaper by water. Providing we have ample time to wait for the material we would just as soon have it come by water because there is a little saving. It comes from the East and is shipped through the Panama Canal. I have always been able to get materials down town such as I might need from the dealer. Also during 1922 I had all the materials. I happened to have them because I had them purchased away ahead. I never had to make inquiries from any of the plumbing supply houses for materials. I was a member of the Builders' Exchange once. I don't know whether I am a member now. I sent in my resignation, but I don't know whether it has been accepted. I have not been notified.

[fol. 399] STIPULATION RE CORRESPONDENCE, ETC.

It is hereby stipulated by and between the parties hereto, by and through their respective attorneys, that the following were general circular letters sent to members of the Builders Exchange:

July 25th, 1922, addressed to N. H. McClure;
 August 4, 1922, " " " "
 December 18, 1922, " " " "

President's letter No. 5, dated May 9, 1923;
 " " " 9, dated July 10, 1923;
 " " " 11, " July 12, 1923;
 Letter to George P. Schwab dated May 18, 1923;
 President's letter No. 12, dated August 27, 1923,

copies of which are attached hereto and designated "Exhibits 1, 2, 3, 4, 5, 6, 7, and 8" respectively.

It is further stipulated that a letter dated July 11, 1923, from the Sandusky Cement Company to Mr. Wm. H. George, Chairman of the Industrial Relations Committee of the Builders' Exchange, copy of which is attached hereto and made a part hereof and designated "Exhibit 9" was sent by the said Sandusky Cement Company and received by Mr. Wm. H. George, and that a reply to said letter was sent by said Wm. H. George, President of the Builders' Exchange to the said Sandusky Cement Company, dated July 17, 1923, copy of which is hereto attached, made a part hereof and designated as "Exhibit 10."

It is further stipulated that ninety per cent (90%) of the new building work done in the City and County of San Francisco, is done by persons, corporations or copartnerships who are members of the Builders' Exchange of San Francisco, one of the defendants herein.

It is further stipulated that the following are copies of original [fol. 400] telegrams sent and received by the parties named therein, as the case may be and as they appear thereon:

"Redwood City, Calif., May 3, '23.

Sandusky Cement Co., Cleveland, Ohio:

Quote minimum car hundred seventy five barrels Medusa White Cement fob wharf San Francisco also fob Redwood City California state time of delivery.

Gray, Thorning Lumber Co."

"Cleveland, Ohio, May 3, 1923.

Geo. P. Schwaab, Cedar Glenn Resort, Tobin, Plumas County, California:

Gray Thorning requesting quotation on carload at San Francisco and Redwood wire advice.

Sandusky Cement Co."

"Cleveland, Ohio, via Chico, Calif., May 4, 1923.

Geo. P. Schwaab, care Cedar Glen Resort, Tobin, Plumas County, Calif.:

Gray Thorning requesting quotation on carload of San Francisco and Redwood; wire advise.

The Sandusky Cement Company."

(Note. Envelope attached to original says "Hotel Trinity, Los Angeles, Calif.")

"Los Angeles, Calif., May 7, 1923.

Mr. L. E. Crawford, 180 Jessie St., c/o Builders Exchange, San Francisco, Calif.:

Gray Thorning requesting quotation San Francisco and Redwood wire advice care Hotel Trinity Los Angeles.

George P. Schwaab."

[fol. 401]

"San Francisco, Calif., May 7, 1923.

George P. Schwaab, Hotel Trinity, Los Angeles, Calif.:

No change Gray Thorning situation since your departure from San Francisco.

L. E. Crawford."

"Los Angeles, Calif.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

San Francisco Exchange advise no change in Gray Thorning situation suggest you quote and request permit with order.

George P. Schwaab."

"May 8th, 1923.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

This office will not request permit suggest you phone Gray Thorning price requesting they accompany order if placed with permit do not promise immediate shipment.

Sandusky Cement Co."

"Redwood City, Calif., May 8, 1923—PM 8.26.

Sandusky Cement Co., Cleveland, Ohio:

Schwaab quotes six seventy seven cement fob docks San Francisco ship one hundred seventy five barrels quickly wire acceptance.

Gray Thorning Lumber Company."

"May 9th, 1923.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

Gray Thorning request wire acceptance and shipment per your quotation advise.

Sandusky Cement Company."

[fol. 402]

"1923, May 9, Los Angeles, Calif.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

Suggest you ignore Gray Thorning wire or advise behind on shipments and stall please refer my report April El-venth and letter April twentieth on Oakland Lime and advise.

George P. Schwaab."

Los Angeles, Calif., May 10, 1923.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

I complied with your telegraphic instructions of eighth and quoted Gray Thorning over telephone my wire of ninth was reply of yours of same date asking to advise.

George P. Schwaab."

May 11th, 1923.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

In addition to quoting Gray Thorning did you request them to forward permit with order stop. Shall we ship them yes or no?
C. B. Rogers."

"Time, 10.35 A. M., May 12, 1923.

Gray Thorning Lumber Co., Redwood City, Calif.:

Your order permit covering not received all orders booked subject to delay price subject to change without notice account ocean rates increasing.

Sandusky Cement Co."

together with letter of May 12th, 1923, of the Gray, Thorning Lumber Company to the Sandusky Cement Company, as follows:

[fol. 403]

"Gray Thorning Lumber Co.

Redwood City, Cal., May 12, 1923.

Sandusky Cement Co., Cleveland, Ohio.

GENTLEMEN: We are just in receipt of your telegram advising us that our order permit has not been received, consequently you cannot ship our order.

We do not know just exactly what you mean by a permit, but if such means that we have to make an affidavit pertaining to our race, citizenship and ability to pay our bills before we can do business with you, you might as well consider business relations closed.

We have sold directly (and more so indirectly) a considerable quantity of Medusa Cement and have felt a pride in so doing by virtue of the fact that the writer is an Eastern man, being born and raised in West Virginia, nor far from your city, consequently, we felt somewhat at home in pushing your product.

However, we will have to look to some other white cement, which, no doubt, we can find in short order.

Yours very truly, (Signed) Gray, Thorning Lumber Co.,
per W. P. Gray. WPG/B."

Dated this — day of October, A. D. 1923.

EXHIBIT I IN EVIDENCE

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., July 25, 1922.

H. N. McClure, 608 Octavia St., San Francisco, Cal.

DEAR SIR: I want to take this opportunity to thank you as a building material dealer of this City for the faithful way in which you have observed the Permit System for the Counties of San Francisco, San Mateo and Santa Clara.

[fol. 404] It is very encouraging to be able to advise you that the Industrial Association of Santa Clara County advises today, that the Union warehouse at this time is empty of materials and that Union contractors are fast coming over to the American Plan.

Also to advise you that in this City bootlegging has almost entirely ceased.

May I again at this time ask you to redouble your efforts at this particular moment to see that a permit is exacted for every delivery, carloads or less than carloads? I feel sure that the closest adherence to this matter at this time for a short time longer will entirely clean up the situation.

Thanking you for your continued cooperation, remain

Yours very truly, (Signed) W. H. George. W. H. George,
Chairman Industrial Relations Committee.

EXHIBIT 2 IN EVIDENCE

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., Aug. 4, 1922.

H. N. McClure, Esq., 608 Octavia St., San Francisco, Calif.:

I assume you were present at or have heard of the Mass Meeting held at the Builders' Exchange on last Tuesday August 1st.

The result was that a motion to abandon the Permit System was almost unanimously beaten, therefore the permit System is in full force and effect.

We are now tightening upoon the whole system with the hope of cleaning the entire situation up within a couple of weeks, which of course is what we all desire. Therefore your closest attention is requested to the details of the Permit System.

Will you kindly be advised that no permits will be good longer than 15 days from their date. Therefore please take up and demand new permits if any are presented to you older than 15 days from their date.

We are also instructing Mr. Drury, the auditor, as he checks the permits to take them up so that no old permits may be in existence anywhere.

[fol. 405] Please be advised that effective at once at the request of the Alameda County Industrial Association and of the Alameda County Builders' Exchange, the Permit System is hereby extended to take in Alameda County, therefore from this date the Permit System on cement, lime, plaster, ready mixed mo-tar, common brick, fire and face brick, terra cotta and all clay products, sand, rock and gravel, wall board, button lath, Keene Cement, and all plaster products, wire lath, metal lath of all kinds, and wood lath, is in effect for the Counties of San Francisco, San Mateo, Santa Clara and Alameda.

Please be sure that you have on hand a permit for every delivery, either carload or less than carload and to either dealer or consumer.

Yours very truly, (S.) W. H. George. W. H. George, Chairman Industrial Relations Committee. WHG-b.

EXHIBIT 3 IN EVIDENCE

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., Dec. 18, 1922.

H. N. McClure, Esq., 608 Octavia Street, San Francisco, Cal.

DEAR SIR: It is with a great deal of pleasure as the old year draws to a close that I thank you on behalf of the San Francisco Builders' Exchange for the cooperation which you have given us in the maintaining of the Permit System, the very necessary agency for maintaining the American Plan.

May I remind you at this time that the Permit system is still in full effect for the Counties of San Francisco, San Mateo, Santa Clara and Alameda.

That you must insist on having in your office a permit for all deliveries in these Counties, made either to dealers or contractors, on the following building materials:

Cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

It is apparent that it will be necessary in order to sustain the position which we have acquired in this community, to keep up the Permit System throughout the year 1923, so your continued cooperation and courtesy extended Mr. Gage, our Auditor, will be very much appreciated.

[fol. 406] Trusting that you have had a prosperous year through the increased activities in the building business made possible by the maintaining of the American Plan, and wishing you all the compliments of the season, including a happy and prosperous 1923, remain

Yours very sincerely, Builders' Exchange of San Francisco,
by Committee on Industrial Relations. (S.) W. H. George.
W. H. George, Chairman. WHG-b.

P. S.—Please remember that permits presented more than fifteen days after their date are null and void and will be taken up by the Auditor the same as used permits.

EXHIBIT 4 IN EVIDENCE

Exhibit #1

The Builders' Exchange, 180-188 Jessie Street

President's Letter #5

San Francisco, Calif., May 9, 1923.

Did you hear the good news? The Jury says that the American Plan Enforcement Act, called the Permit Department, is "not guilty".

This means that the Industrial Relations Committee of The Builders' Exchange will continue to maintain the Permit Department strictly, and every member is asked to please cooperate so as to make the work as ample, easy and effective as possible. If you are a consumer don't ask your dealer for stuff without getting the permit. If you are a dealer don't give the consumer any material until he presents you in hand with the permit.

Let's lighten the duties of the Grievance Committee and keep "fine" Money in our own pockets.

Remember, President Harding says:

"Liberty is gone in America when any man is denied by anybody the right to work and live by that work. It does not matter who denies. A free American has the right to labor without any other's leave."

Please remember that the award of the Impartial Wage Board for the year 1923 says:

"The wage scale now laid down shall go into effect on the first day of January, 1923 and shall remain in force for one year and thereafter until occasion arises for its revision."

[fol. 407] It is exceedingly important at this time that all members of The Builders' Exchange observe strictly the Wage Scale. Pay no less and pay no more. It is the Standard Wage Scale of your exchange and the high cost of building must be held down or the public won't buy our goods.

Don't forget the grand Annual Anniversary Banquet May 19th. If you haven't got your tickets, get them quick from Steve or Heinie. Reservations are going fast. The room holds only 500 and more than 400 reservations are already in, so don't get left as it is going to be the biggest time that the Builders' Exchange ever gave, and that means some big time.

Yours very truly, W. G. George, President.

EXHIBIT 5 IN EVIDENCE

Exhibit #2

The Builders' Exchange, 180-188 Jesse Street

President's Letter #9

San Francisco, Calif., July 10th, 1923.

Mr. Berg of the Port Costa Brick Co. brought to the Board of Directors the other day a very valuable suggestion, namely, that every member of the Builders' Exchange print on his letterhead in a good prominent place the words "Member the Builders' Exchange of San Francisco." The Board adopted the good suggestion and it is hoped that every member will cooperate and see that this slogan is on his stationery. Let's boost our Exchange.

On August 6th the question will again come up of increasing the dues of the Builders' Exchange. The increased funds to be used to help the work of the Industrial Association which has made possible financially the present good industrial condition in our city. We should remember that the Industrial Association is financing our Permit Department which is unquestionably the medium of holding the situation level. Every member of the Exchange should give this important question sincere and thorough thought.

The Permit System is still in full force and effect, and time and time again it develops that this is the means of keeping the situation level. The members of the Exchange in all fairness to each one as well as to the rules and principles of the Exchange are requested to remember this at all times and make it just as strictly a rule of your business as any other rule.

Some plans are on foot which will be announced shortly if found feasible which will make our Exchange the best organization of its kind in the Country and make it mean more to the membership than ever before.

[fol. 408] Now let's get together along the lines of cooperation and lend the helping hand to make our own business better and our own organization stronger and better than ever.

Yours sincerely, W. H. George, President.

P. S.—Quotation from the Exchange Hour published by the Builders' Exchange of Alameda County:

"Liberty is gone in America when any man is denied by anybody the right to work and live by that work. It does not matter who denies. A free American has the right to labor without any other's leave."—Warren G. Harding, President of the U. S.

EXHIBIT 6 IN EVIDENCE

Exhibit No. 3

The Builders' Exchange, 180-188 Jessie Street

President's Letter #11

San Francisco, Calif., July 12th, 1923.

To all members of the Builders' Exchange:

Pile Drivers, Wharf builders and Carpenters Union #34, affiliated with the Bay District Council of Carpenters and the Building Trades Council, is out on strike for \$9 a day.

Careful investigation has convinced the Industrial Relations Committee that this is the entering wedge in an attempt of all carpenters affiliated with the Bay District Council of Carpenters and the San Francisco Building Trades Council to raise the minimum wage to \$9 a day.

It is also noted that carpenters throughout the town are going around to the jobs and stating that they will not work for less than \$9 a day.

Your attention is respectfully called to the Standard Wage Scale of the Builders' Exchange, adopted by the Central Council for the full year of 1923. On this wage scale you will note the standard wage for carpenters is fixed at \$8 a day.

You are respectfully advised that the Industrial Relations Committee, after a hearing held this evening with members of the Wharf & Pile Drivers' Association and General Contractors' Association present, have adopted a resolution that:

"Effective Monday morning July 16th, no member of the Builders' Exchange employing carpenters shall pay other than the standard wage scale, except to Foremen."

Yours very truly, W. H. George, President.

[fol. 409]

EXHIBIT 7 IN EVIDENCE

Exhibit No. 6

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., May 18, 1923.

Geo. P. Schwaab, Esq., Hotel Stewart, San Francisco, Calif.

DEAR SIR: As announced to you in President's letter #5, the Permit System was found "not guilty" in our Superior Court and is in full force and effect. The purpose of this letter is to remind you that the Permit System covers cement, lime, plaster, ready

mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene's Cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

Also that it is in effect for the counties of San Francisco, San Mateo, Santa Clara, Alameda and the City of Richmond.

Manufacturers must require San Francisco Builders' Exchange permits from all dealers to whom they ship in the above mentioned territories, except that permits issued to dealers for Alameda County and the City of Richmond by the Oakland Builders' Exchange will be satisfactory.

All dealers receiving goods under these dealer permits mentioned above must have on file in their office a permit before they make any deliveries to any consumer or other dealer.

Auditor's checking will be intensified at once, and it will be necessary to prefer charges against anybody not strictly complying with the above instructions.

We earnestly plead with you to cooperate with this Committee so that the Permit System may become absolutely effective for the carrying out of the American Plan in the building Industry, and it is sincerely hoped that it will not be necessary to prefer charges against any one for dereliction of duty.

"Keep 'fine' money in your pocket."

Yours very truly, (Signed) W. H. George. W. H. George,
Chairman Industrial Relations Committee. WHG-b

[fol. 410]

EXHIBIT 8 IN EVIDENCE

Exhibit No. 6

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., May 18, 1923.

Geo. P. Schwaab, Esq., Hotel Stewart, San Francisco, Calif.

DEAR SIR: As announced to you in President's letter #5, the Permit System was found "not guilty" in our Superior Court and is in full force and effect. The purpose of this letter is to remind you that the Permit System covers cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene's Cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

Also that it is in effect for the counties of San Francisco, San Mateo, Santa Clara, Alameda and the City of Richmond.

Manufacturers must require San Francisco Builders' Exchange permits from all dealers to whom they ship in the above mentioned

territories, except that permits issued to dealers for Alameda County and the City of Richmond by the Oakland Builders' Exchange will be satisfactory.

All dealers receiving goods under these dealer permits mentioned above must have on file in their office a permit before they make any deliveries to any consumer or other dealer.

Auditor's checking will be intensified at once, and it will be necessary to prefer charges against anybody not strictly complying with the above instructions.

We earnestly plead with you to cooperate with this Committee so that the Permit System may become absolutely effective for the carrying out of the American Plan in the building industry, and it is sincerely hoped that it will not be necessary to prefer charges against any one for dereliction of duty.

"Keep 'fine' money in your pocket."

Yours very truly, (Signed) W. H. George. W. H. George,
Chairman Industrial Relations Committee. WHG-b.

EXHIBIT 9 IN EVIDENCE

The Builders' Exchange, 180-188 Jessie Street

President's Letter #12

San Francisco, Calif., Aug. 27, 1923.

[fol. 411] To all memers of the Builders' Exchange, Greetings:

I am glad to advise you that the Pile Drivers, Wharf Builders, and Carpenters Union #34, which has been on strike for five weeks, has through the efforts of your organization returned to work at the old terms and conditions.

The Builders' Exchange is to be complimented on the good work done by its Building Committee. The lot at Fifth and Minna has been selected at a cost of \$110,000.00. There is a long term mortgage on the property for \$57,500.00 and the balance which we have to pay is more than on hand in our Treasury. The Annual income from this property is \$8,400.00 and already we have been offered a profit on the deal.

Please remember that the Permit System is in full force and effect for the Counties of San Francisco, San Mateo and Santa Clara. It is noted that some of the manufacturers have been making shipments to dealers in these territories occasionally forgetting to get the permits. Manufacturers will please be extremely careful on this question.

Members employing carpenters are reminded that the standard wage scale is \$8.00 a day except to foremen.

I hope all members of the Exchange are now printing on their stationery "Members The Builders' Exchange of San Francisco." Don't forget Builders' Day at Capitola Sept. 1, 2, and 3.

Remember that the foreman on the job represents the management and if best results are to be obtained for the management, he should not be a member of a Labor Union.

Your President is anxious that each member of the Builders' Exchange should get out of the Craft organizations all the benefit that he is entitled to. The Constitution and By-Laws of the Builders' Exchange provide that each member must belong to a proper Craft Council, and the Craft Councils that are functioning properly are getting benefits each day.

This matter of maintaining and the proper functioning of the Craft Councils is of inestimable value to the sub-contractor in his dealings with architects, owners and general contractors.

Lately your President took up with the Board of Directors of the General Contractors Association the proposition of allowing the sub-contractors to do the specialty work.

Confining the letting of sub-contracts to members of the Builders' Exchange.

It is hoped that a program can be worked out which will find plenty of work for the sub-contractors so that they will not need to go into general contracting.

These problems can only be worked out by proper committee work and proper working rules for the General Contractor and Sub-contractor Crafts. I am glad to say that under recent date I am [fol. 412] in receipt of a letter from the General Contractors Association, signed by Mr. Biller as President of the Board of Directors, which letter indicates that the Board of Directors of the General Contractors Association is always ready to sit as a Committee to open up friendly conferences with committees from Sub-Contractor crafts along these lines.

It is hoped that each Craft Council through its own Secretary, and with the assistance of our Craft Secretary, will form committees at once for the purpose of taking up these Conferences with the General Contractors.

Please remember that if these two problems can be worked out by reciprocal agreements between the Craft Councils it will make our Exchange a really strong, beneficial Exchange. Now let's each do his part.

I am addressing a letter to all the architects calling their attention to the good men in the Builders' Exchange, and asking them when taking bids to confine themselves to our members.

I hope every member of the Exchange will constitute himself a committee of one to look up desirable members in his line of business and get them into the Builders' Exchange. Let's make the Builders' Exchange entirely representative of the whole building industry in San Francisco.

Yours for a better and bigger Builders' Exchange, W. H. George, President.

EXHIBIT 11 IN EVIDENCE

Exhibit No. 4

July 11, 1923.

CC. Brown.

Mr. W. H. George, Chairman Industrial Relations Committee, the
Builders' Exchange, 180-188 Jessie St., San Francisco, Calif.

Re Permit System

MY DEAR MR. GEORGE: Due to the irregularity of our representative being in your city to secure necessary permits from various dealers entitled to purchase cement under your system, the writer would respectfully ask if it would be possible for you to mail us monthly, to this office, a list of dealers that are in good standing in your organization in order that there may be no delay in getting their shipments to them promptly.

You realize, of course, that the Sandusky Cement Company [fol. 413] markets its products direct to the various dealers in the State of California. Our competitor's product is handled thru a jobber or on a jobbing basis in San Francisco. It is therefore unnecessary for that manufacturer direct to secure permits. This difference in the method of marketing places us in a somewhat handicapped position.

The writer feels that if you will kindly instruct your office to mail us each month, a list of the dealers in good standing and immediately upon any dealer being placed on the black list, you so advise us, thus alleviating any possibility of our not working in harmony with your organization.

Our Mr. George P. Schwaab has been transferred to other duties in our company and Mr. George L. Brown is leaving for the coast within the next few days, with instructions to interview you upon his arrival. In the meantime, we would certainly appreciate your issuing instructions in accordance with the above request, if consistent.

Yours very truly, The Sandusky Cement Company.
—— ———, Sales Manager. CBR:Š.

Copy

EXHIBIT 12 IN EVIDENCE

Exhibit No. 5

The Builders' Exchange, 180-188 Jessie St.

San Francisco, Cal., July 17th, 1923.

The Sandusky Cement Co., 1002 Engineers' Building, Cleveland,
Ohio.

Attention of Mr. C. B. Rogers, Sales Manager

DEAR MR. ROGERS: I have for acknowledgement your letter of July 11th, by the way written on my birthday, and appreciate very much your cooperation. Perhaps a little explanation is necessary. Atlas cement handled by the dealers here is bought by them outright and is only delivered to consumers who call at the Permit Dept. securing a permit and presenting it to the dealer, so it comes under our permit system as you can see.

Now, as to your product. There is, and never was any necessity for your representative being in this city to secure necessary permits from the various dealers. The dealers themselves should get the permits and attach them to the orders given your representative just the same as they do with grey cement. For instance my salesmen [fol. 414] never get a permit for our dealer customers. The dealer customer himself goes and gets our salesmen.

I think you will find that this will work out to your satisfaction. It does with the rest of us. If it doesn't please let me know again and I will try and solve the problem if there is one. On the other hand, it is not possible to send out a list. In the first place a list as you describe would probably be called a black list, as you very fairly named it and would get us all in trouble, and in the second place in these troublesome times the situation changes so quickly that a list would hardly cover the necessity.

Believe me we thank you for your cooperation and wish to cooperate with you, and if these suggestions do not work out to your entire satisfaction, please let me know again.

Yours very truly, (Signed) W. H. George, President.
WHG-b.

STIPULATION RE EXHIBITS 11, 12 & 13

It is hereby stipulated by and between the parties hereto, by and through their respective attorneys, that Exhibit No. 11, which is attached hereto and made a part hereof, is a statement of charges against the Tacoma Roche Harbor Lime Company for violation of rules of the Builders' Exchange of San Francisco, as in said Exhibit shown, and that the same were issued by the Grievance Committee

of the Builders' Exchange, and letters attached thereto by the [fol. 415] Builders' Exchange through its Secretary as indicated thereon.

It is further stipulated, that Exhibit No. 12 consists of six (6) pages marked "a", "b", "c", "d", "e" and "f", were signed and sent as their context indicates, and are copies of the originals.

It is further stipulated, that Exhibit No. 13 is a letter signed and sent as its contents indicates.

Dated this 8th day of October, 1923.

EXHIBIT 11 IN EVIDENCE

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., January 23rd, 1923.

Tacoma Roche Harbor Lime Co., 180 Jessie Street, City.

GENTLEMEN: This is to notify you to appear before the Grievance Committee Thursday, Jan. 25th, 1923 at 11 o'clock A. M. for trial upon charges referred to the Grievance Committee by the Board of Directors as per attached copy.

Yours very truly, The Grievance Committee. (Signed) S. A. D. Schenck, Asst. Sec'y.

Copy of Charges

It becomes necessary for the Industrial Relations Committee to prefer charges against the Tacoma Roche Harbor Lime Co., for shipping car C. R. I. & P. 62975 containing Roche Harbor Lime to Mr. Campiano, the Secretary of the Building Trades Council, at San Jose, without a permit.

Also for shipping car S. P. 24506 containing Roche Harbor Lime to J. Cambiani, the Secretary of the Building Trades Council, at San Jose, without a permit.

This is to certify that this is a true certified copy of the charges filed against you with the Board of Directors, and by the Board of Directors referred to the Grievance Committee for trial.

[fol. 416] The case as per the charges in our letter to you of Jan. 16th will also be under consideration.

Respectfully, The Builders' Exchange. (Signed) R. Y. Forbes, Secretary. (Seal.)

EXHIBIT 12 "A" IN EVIDENCE

Western Union Telegram

October 28, 1922.

George P. Schwaab, Hotel Clarke, Los Angeles, California:

Car Medusa Cement Espee eight one seven eight nine arrived San Jose for strikers stop who was this car shipped to.

Chg. H. C. L. & C. Co.

W. H. George.

EXHIBIT 12 "B" IN EVIDENCE

Western Union Telegram

Los Angeles, Calif., Oct. 30, p. m. 10.14.

W. H. George, No. 2 Market St., San Francisco, Calif.:

Have no record or knowledge of car in question the only shipments we made to San Jose were consigned to Borchers Bros.

George P. Schwaab.

EXHIBIT 12 "C" IN EVIDENCE

Sandusky Portland Cement Company

Nov. 10, 1922.

[fol. 417] Industrial Assn. of Santa Clara County, Growers Bank Building, San Francisco, California.

Attention of Mr. Edwards, Secretary

GENTLEMEN: On October 28th you notified me that car of Medusa cement SP 81789 had arrived at San Jose for the strikers. I took this up with Mr. Schwaab, Hotel Trinity, Los Angeles, by wire, the representative of the Sandusky Cement Co., and he replies that he has no record or knowledge of this car and that the only shipments made to San Jose were consigned to Borchers Bros. Can you throw any light on this as I want to find the guilty party? Do your records still show that this car arrived on the 28th is the number right, and was it a car of Medusa cement?

Yours very truly, W. H. George, President. WHG-b.

P. S.—Since writing the above I find out that this was a car shipped to J. Praeder at Redwood City, and was by him reshipped to San Jose. Can you advise me who J. Praeder of Redwood City is? This is rather important as we don't want a repetition and I must get after the Sandusky Cement Co. WHG-b.

(Actually shipped without permit to Gray Thorning Co.)

EXHIBIT 12 "D" IN EVIDENCE

Los Angeles, California, November 14, 1922.

Mr. W. H. George, #2 Market Street, San Francisco, Calif.

MY DEAR MR. GEORGE: Your letter of the 10th inst., is the first intimation I have of any "Medusa" going to J. Praeder at Redwood City. The only shipment we made to Redwood City went to a dealer the Gray, Thorning Lumber Company.

As you know, we are disposed to give you our heartiest cooperation and our product will not be distributed otherwise with our knowledge or consent. When I was at the Exchange last I made inquiry as to the ineligible and was informed the Civic Center was the only one, and no shipments have gone to them since our talk on the subject. If any others are irregular I have not been advised. You can rest assured it is our desire to assist in every way possible.

I plan on returning to San Francisco some time next week. In the meantime, mail will reach me the balance of this week in care [fol. 418] of the Hotel Trinity, Los Angeles.

I am

Sincerely yours, George P. Schwaab."

EXHIBIT 12 "E" IN EVIDENCE

Member of California Industrial Council

Industrial Association of Santa Clara County

San Jose, Calif., Nov. 14, 1922.

Mr. W. H. George, #2 Market Street, San Francisco, California.

DEAR SIR: In answer to your letter of November 10th, will say that J. Praeder, Redwood City, is a truck driver employed by Gray-Thorning Lumber Co.,

In regard to this matter, we wish to thank you for the prompt attention you have given it, as no doubt Mr. Praeder will try the same thing on other materials.

We are also sending you a copy of our letter to the Horton Lime Company, San Francisco.

Yours very truly, Industrial Ass'n of Santa Clara Co. W.
A. Edwards, Secretary. WAE:BMS. Encl.

EXHIBIT 12 "F" IN EVIDENCE

November 15, 1922.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, California.

DEAR SIR: I have for acknowledgement yours of November 14th [fol. 419] and will await your arrival here next week. Please see

me at once as soon as you get here and let's clear up the mystery of that car of Medusa to San Jose.

Yours very truly, W. H. George, President. WHG-b.

EXHIBIT #13 IN EVIDENCE

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., April 3, 1923.

H. N. McClure, Esq., 608 Octavia Street, San Francisco, Cal.

Personal

DEAR MR. MCCLURE: I want to congratulate you on again being in good standing with the Builders' Exchange, which is particularly pleasing in the case of an old member like yourself.

I sincerely hope that no more cases will come up to get you in trouble with this organization, and in this connection want to point out to you that in connection with your grading, teaming and hauling business you decline to haul any material which has not been permitted by the Builders' Exchange.

Yours very truly, (S) W. H. George. W. H. George, President. W. H. G-c.

AFFIDAVIT OF GORDON CHAMBERLIN ON BEHALF OF COMPLAINANT

Gordon Chamberlin, being first duly sworn, deposes and says:

That he is engaged in the building business at 608 Octavia Street, City and County of San Francisco, State of California, and has been for eight years last past; that he does business and has at all times and dates herein stated, done business as the Civic Center Supply Company; that shortly before September, 1922, he placed an order [fol. 420] for two hundred (200) barrels of Medusa White Cement with the Sandusky Cement Company, a corporation having its place of business in Cleveland, Ohio, and its factories in Ohio, Illinois and Pennsylvania, so affiant is informed and believes; that in answer to said telegraphic order affiant received a reply which is attached hereto, made a part hereof and designated as Exhibit 1.

That in said letter there is this statement: "We are unable to make shipment of this order for reasons, with which you are no doubt familiar." The reason with which affiant is familiar and the one which prevented the Sandusky Cement Company accepting the aforesaid order of affiant is because affiant had not obtained a permit and could not obtain a permit therefor from the Builders' Exchange of San Francisco; that previous to September, 1922, affiant was not in good standing with said Builders' Exchange having

been fined Two Hundred and Fifty dollars (\$250.00) for selling building material to persons without a permit of said Builders' Exchange.

Affiant was unable and had been unable to said time to purchase from said Sandusky Cement Company any cement.

Affiant avers that the Pacific Portland Cement Company, which manufactures the Empire Plaster at its plant at Mound House, Nevada, has and continues to refuse to sell its plaster to affiant because affiant does not and cannot obtain a permit therefor from the Builders' Exchange of San Francisco;

That affiant has been unable to purchase lime from the Tacoma Roche Harbor Lime Company in large amounts without having a permit for said lime from the contractor to whom said lime is to be sent for use by said contractor, with the exception, however, that affiant has been able to obtain a few barrels now and then from said Tacoma Roche Harbor Lime company without a [fol. 421] permit.

EXHIBIT 1 TO CHAMBERLIN'S AFFIDAVIT

Sandusky Cement Company, 626 Engineers Building, Cleveland, Ohio

September 19th, 1922.

The Civic Center Supply Co., San Francisco, Calif.

GENTLEMEN: Referring to your recent telegram requesting us to ship you 200 barrels of Medusa White Cement wish to advise that we are unable to make shipment of this order for reasons with which you are no doubt familiar.

Trusting it may be possible for us to take care of your business at some future date, we beg to remain

Yours very truly, The Sandusky Cement Company.

(Signed) C. B. Kayser. CBK:S.

AFFIDAVIT OF GORDON CHAMBERLAIN ON BEHALF OF COMPLAINANT

Gordon Chamberlain, being first duly sworn deposes and says:

That he resides at 168 Herman Street, City of San Francisco: that he is engaged in the building supply business at 608 Octavia Street in said city;

That heretofore and in February, 1917, deponent became a member of the Builders' Exchange of San Francisco, and continued said membership until May, 1922; that at that time he was brought up on charges and cited to appear before the Industrial Relations Committee of said Builders' Exchange; the charges specified that he had been selling building material without permits and that he was thereupon fined \$250.00, which fine up to the present time has remained unpaid.

That subsequently your deponent endeavored to purchase building supplies at various places in the city of San Francisco and that he was unable to do so.

That in February, 1923, deponent sent N. Messier, one of his employees to Roche Harbor, Washington, to purchase lime from the [fol. 422] Tacoma & Roche Harbor Lime Company.

That on February 21st, 1923, J. S. McMillin, President of the said Lime Company sold deponent through N. Messier, two hundred and fifty (250) barrels of Roche Harbor Lime at \$1.80 per barrel net, F. O. B. dock at Roche Harbor, Washington. This lime was billed and shipped on the same day.

That on February 23rd, 1923, deponent received the following letter from the Tacoma and Roche Harbor Lime Company:

"Roche Harbor, Wash., Feb. 21, 1923.

"Civic Center Supply Co., San Francisco, Calif.

GENTLEMEN: We enclose herewith invoice for 250 Bbls. of Roche Harbor Lime shipped to you today by SS "Edna." We fully intended to have a separate bill of lading made for you covering these 250 bbls. of lime: but in the confusion of settling up with the vessel after loading we failed to make out a separate bill of lading for your 250 bbls. and same were included in the bill of lading which was made out in favor of ourselves, and which we are mailing to our Mr. Reveal. We are instructing him, however, to deliver to you 250 bbls. of lime covered by your own bill of lading. We are also advising him that you will take the 250 bbls. of lime direct from the vessel, pay the freight on same, and that when you settle you will hand him your check for the balance as per invoice enclosed, as we are making this invoice read \$1.80 per bbl. f. o. b. Roche Harbor, you paying the freight which is the equivalent of \$2.15 f. o. b. dock, San Francisco.

We had ready another thousand bbls. of lime to send forward on the "Edna" and were very anxious to send it, as we know Mr. Reveal will be very short; but when the vessel arrived here she had not reserved space sufficient to take all the lime we had in the warehouse. After Mr. Reveal turns over to you the 250 bbls. of lime intended for you, he will be left only 699 bbls. for his general trade, which will be very short for his requirements. He will therefore not be able to give you any additional lime from this cargo.

The "Edna" will not return here for about twenty-five days, and that will doubtless be the first opportunity we will have to ship any more lime to San Francisco. We cannot now state just how much we can spare for you at that time; but we will be glad to know in advance of her arrival about what quantity you would like to have in order that we may do our best to serve you as far as possible.

Yours very truly, Tacoma & Roche Harbor Lime Co., by
J. S. McMillin, President. JSMeM:N.

Enclosure.

[fol. 423] A few days later deponent called Mr. Reveal, Agent for the Tacoma & Roche Harbor Lime Company, on the telephone, at 216 Pine Street, San Francisco, and asked him if he would ship the 250 barrels of lime which deponent had purchased from Mr. McMillin on February 21st, 1923; Mr. Reveal said that he could not ship the lime to deponent; that it had been taken off the boat and loaded onto cars and was to be shipped out of town right away.

A few days later deponent again called Mr. Reveal on the telephone and requested him to ship the 250 barrels of lime; Mr. Reveal said that he could not ship the lime; that if he did so it would mean that he would lose the sale of 2,500 or 3,000 barrels of lime to members of the Exchange who were in a position to buy lime from him under the Permit System, and that under the circumstances existing at that time he could not let deponent have the lime.

Deponent called Mr. Reveal several times and endeavored to obtain the lime, but he has not been able to do so up to the present time.

AFFIDAVIT OF JAMES A. GRAY ON BEHALF OF COMPLAINANT

James A. Gray, being first duly sworn deposes and says:

That I am and for nineteen (19) years heretofore have been, the General Representative of the United Brotherhood of Carpenters and Joiners of America, located at 810 Merchants National Bank Building, in the City of San Francisco, State of California.

That because of the inability of contractors, builders, workmen and the public generally to buy hardwall plaster in California, because of the action of the defendants, the Builders' Exchange of San Francisco and The Industrial Association of San Francisco, there was formed in San Francisco an organization known as the Building Trades Material Supply Company, the purpose of which was [fol. 424] to furnish building materials to contractors and other persons who were unable to obtain the same locally for the reasons already assigned.

That the plant of the Jumbo Plaster Company is at Sigurd, Utah; Mr. W. P. Payne, Sr. is the manager of the Jumbo Plaster Company, and he lives at Richfield, Utah. Sigurd is about ten miles from Richfield, and Richfield is about 125 miles south of Salt Lake City. That some time in the month of May, 1921, I went to Richfield to see Mr. Payne, Sr. arriving in the early evening. I called up Mr. Payne's home. Mr. W. P. Payne, Jr. in charge of the plant at that time, came to the hotel and informed me that Mr. Payne, Sr. was on his way to Los Angeles, having gone there in an effort to work up further trade for the Jumbo Plaster Company. I informed him that I was desirous of buying Ten Thousand Dollars (\$10,000.00) worth of plaster, and wanted to know what was the very best price they could possibly give me on Jumbo Plaster, f. o. b. Sigurd. He asked me where I was going to use this plas-

ter. I told him that I wanted it for the Honolulu trade and I wanted it shipped to the Harbor Warehouse, in San Francisco. Fear that the Jumbo Plaster Company might have had information that we were in the market for plaster and that if they knew where it was to be used I would not get it, was my reason for telling him it was for the Honolulu trade. He stated that, of course, if it was to be used in San Francisco or vicinity they would not supply us. I made no answer to this statement. He stated that he knew at what town his father would put up and that it was about halfway between Salt Lake City and Los Angeles, the name of which I forget, and that he would call him up and see what he said about it. W. P. Payne, Jr. came down the following morning and stated that he had talked with the old man, meaning W. P. Payne, Sr. [fol. 425] and that he said that he "did not give a d— where it was going—grab that order we need it."

W. P. Payne, Jr. stated also that if it was necessary his father would return to Salt Lake City and meet me there. I placed the order and returned to Salt Lake City, where I met at the Hotel Newhouse, Joshua Greenwood, the president of the Company and Christian Peterson, an attorney, one of the directors of the Company, and they, too, were very anxious to secure our orders. Mr. Greenwood got in touch with Mr. Payne, Sr., by telephone and prevailed upon him to return to Richfield, where I went two days later and met W. P. Payne, Sr.

Mr. W. P. Payne, Jr. is now and has been for some time an investigator for the United States Government at Salt Lake City, Utah.

I met Mr. Payne, Sr. who showed me over the plant and took me to their quarry some four miles from the plant. He told me at that time that his plaster had formerly been handled in San Francisco by the defendant, W. H. George, manager of the defendant, Henry Cowell Lime and Cement Company of San Francisco.

That when I made the original arrangement with the Jumbo Plaster Company through Mr. Payne, Sr. I deposited in the Walker Bros. Bank, Salt Lake City, Utah, sufficient funds to cover eighteen (18) carloads of plaster at \$8.50 per ton. Mr. Payne, Sr. agreed to this arrangement by which they were to get their pay as fast as they presented their bills of lading to the bank. For the orders that I placed in 1922, I deposited funds to cover four carloads in the James M. Peterson Bank at Richfield, Utah, for which they were to receive their pay as fast as they presented their bills of lading.

I received from the Jumbo Plaster Company during 1921, eight [fol. 426] teen carloads of forty tons each of Jumbo Plaster, shipped from their plant to the Harbor Warehouse in San Francisco. As soon as the said plaster began to arrive in San Francisco, the said Builders' Exchange of San Francisco, of which the said W. H. George and the said Henry Cowell Lime and Cement Company are members, placed all products of the Jumbo Plaster Company of Sigurd, Utah, on the unfair list and posted a notice to that effect in

the assembly room of the said Builders' Exchange in San Francisco, and thereafter the members of the said Builders' Exchange boycotted the Jumbo brand plaster and refused to purchase any of the products of the Jumbo Plaster Company of Sigurd, Utah.

In the early part of 1922, the building trades organizations in Santa Clara County found themselves in the same predicament that we were in in San Francisco in 1921. I wired Mr. W. P. Payne, Sr. April 20, 1922, and informed him that I was in need of a large quantity of plaster, and asked if they would be able to make prompt shipments, and received the following reply on April 21, 1922: "Can fill your orders at \$8.00 per ton f. o. b. Sigurd. Sacks extra. Jumbo Plaster Co." I then got in touch with him by long distance about the sacks, saying that we wanted the price quoted on non-returnable sacks, and he quoted me a price of 7¢ a sack. The following day—April 22nd, 1922, I received the following telegram from him:—"Since telephone conversation have decided on 6¢ non-returnable sacks freight rate 34¢ per hundred. Can furnish you with hardwall. May arrange to come to Oakland in a few days. W. P. Payne, Manager."

On April 29th, 1922, I received the following telegram, signed, Jumbo Plaster Co.: "Will load car Monday San Jose. Please advise A. Knowles that we can load cars for him Tuesday." The said A. Knowles is a contracting plasterer in San Francisco who was unable to obtain plaster because of the embargo. On learning of this fact [fol. 427] I went to him and advised him to get in touch with the Jumbo Plaster Company, which he did, and this is the reason Mr. Payne, Sr. advised me to get in touch with Knowles and give him this message.

On May 1, 1922 I received the following telegram signed by the Jumbo Plaster Company: "We are prepared to make prompt shipment. Send in all orders you can. Jumbo Plaster Co."

The plaster was coming very slowly and I wired the Jumbo Plaster Company from Bakersfield, California, asking the reason of the delay, and received the following telegram, signed Jumbo Plaster Company: "Will load your orders on file. Mr. Payne in Salt Lake enroute to California."

On June 29, 1922, and before we had received the four carloads, I sent them the following telegram; "Deposited Tuesday with Petersons Bank eleven hundred and four dollars for another hundred twenty tons plaster. Have you shipped last car of previous order. How soon will you ship on this order. Left Los Angeles Tuesday to meet Mr. Payne here; up to present he hasn't shown. Answer my expense. Alexander Gray." This last telegram sent from Oakland.

On July 1, 1922, I received from the Jumbo Plaster Co., the following telegram: "Have not shipped last car on previous order. Cannot promise shipment until after fourth."

On July 2nd or 3rd, 1922, Mr. Payne, Sr. arrived in San Francisco and stopped at the St. Francis Hotel, where I met him and discussed the situation relative to building materials here. I went to the St. Francis to meet him again by appointment on the afternoon

of July 5th, 1922. He was not in when I arrived but later he hurried in and stated that he had about forty minutes to catch his boat to Los Angeles. He stated that he could have sold several hundred car-[fol. 428] loads of plaster in San Francisco, but with the orders that I would be able to supply him, he was not going to seek any further trade here and my trade, together with his Utah trade, would be all he would be able to handle for the present. While we were talking he was called to the telephone. He returned and stated that he had to hurry over to the said Builders' Exchange again. I bade him good-bye, with the understanding that we were to secure our plaster as per agreement, but I received no more plaster from the Jumbo Plaster Company.

I wrote Payne, Sr. and asked him if we were going to receive any further shipments because I was desirous of knowing as we still had about a thousand dollars in the Peterson Bank. I received a reply from him advising me to withdraw my funds from the Peterson Bank and that owing to conditions at their plant they would be unable to make any further shipments for some time, but simultaneously with the receipt of this communication from Payne, Sr. I learned that he had shipped five carloads of plaster to the Cowell Lime and Cement Company at San Jose, California, which is distant about fifty miles from San Francisco, California.

AFFIDAVIT OF CARL JORGENSEN ON BEHALF OF COMPLAINANT

Carl Jorgensen, being first duly sworn on oath, deposes and says:

That he has been engaged in business in the City of San Francisco, State of California, for the past twelve (12) years which consists in buying and selling building material and contracting work in the erection of buildings and now maintains an office at 604 Mission Street in the said City of San Francisco; that he now purchases and supplies the following material used on buildings in the City of San Francisco, to-wit: Rolling doors, safety tread stairs, hand power elevators and dumb waiters, and that a large percentage of this material is purchased outside of the State of California and shipped through the channels of Interstate Commerce to the City of San Francisco; that particularly in the case of rolling doors, the [fol. 429] same are manufactured in Massachusetts, Philadelphia, Pa., Illinois, Indiana, Ohio and New York State; that orders are placed with the factory in these states according to specifications ordered by the architects, and then shipped direct to San Francisco through the channels of Interstate Commerce for particular buildings, and in many instances direct to said buildings, without being intermingled in any sense with other merchandise in local warehouses; that this also is the practice with other firms in San Francisco who take orders for supplying rolling and revolving doors of different makes to particular buildings according to specifications, and who control a larger portion of said business than he does.

AFFIDAVIT OF H. W. KAGE ON BEHALF OF COMPLAINANT

H. W. Kage being first duly sworn deposes and says:

That since the 21st day of March 1917, he has been and is now a Special Agent of the United States Department of Justice and has personal knowledge of the facts hereinafter set forth; that on or about the 5th day of September, 1923 he interviewed at Cleveland, Ohio one Clinton B. Rogers who then and there advised affiant that he was at that time, and for some time previous, the Sales Manager of the Sandusky Cement Company, a corporation, which corporation is engaged in the business of manufacturing and selling building cement; that its factories where said cement is made, are located at York, Pa., Bayridge, Ohio, and Dixon, Ill.; that the principal office of the company is No. 1002 Engineers Building, Cleveland, Ohio; that the said Clinton B. Rogers stated to affiant that the said Sandusky Cement Company sold and shipped its product of cement to persons, dealers or concerns engaged in business, (among other places) in and around the City and County of San Francisco, and had been for sometime last past; that it was the custom of the said Sandusky Cement Company, in shipping its cement from its factories to dealers in and around the City of San Francisco, State of California, to do so by real shipments to Baltimore, Md., and thence by boat to the said City of San Francisco.

That the said Sandusky Cement Company was, during the period hereinafter set forth in Exhibits referred to, a member of the Builders' Exchange, 185-188 Jessie Street, San Francisco; that he was not familiar with the details of labor conditions in and around the City of San Francisco, but that he would allow affiant to inspect the correspondence in the files of the aforesaid corporation bearing on the subject of the said Builders' Exchange, and the Permit System of the said Builders' Exchange in force at the times and dates mentioned in the copies of letters, circulars and telegrams hereinafter referred to.

That as a member of said Builders' Exchange said Sandusky Cement Company received from the Builders' Exchange certain circulars of said Builders' Exchange, copies of which are attached hereto and made a part hereof, and designated as Exhibits 1, 2 and 3; that said Clinton B. Rogers, Sales Manager of the said Sandusky Cement Company, turned over to the affiant the correspondence relating to the transaction between the said Sandusky Cement Company and the Gray Thorning Lumber Company, located at Redwood City, State of California.

That affiant examined said file; that Exhibits 1, 2, 3 and 6 attached hereto are exact copies of the originals respectively and that the copies of telegrams and letters hereinafter set forth are exact copies of the originals respectively; that during said period set forth in said telegrams George P. Schwab was the Sales Representative of the said Sandusky Cement Company in and around the said City of San Francisco and also of the Pacific Coast; that said telegrams and correspondence are as follows:

"Redwood City, Calif., May 31, 1923.

Sandusky Cement Co., Cleveland, Ohio:

Quote minimum car hundred seventy five barrels Medusa white cement fob wharf San Francisco also fob Redwood City California State time of delivery

Gray Thorning Lumber Co."

"Cleveland, Ohio, May 3, 1923.

Geo. P. Schwab, Cedar Glen Resort, Tobin, Plumas County, California:

Gray Thorning requesting quotation on carload at San Francisco and Redwood Wire advice

Sandusky Cement Co."

"Cleveland, Ohio, via Chico, Calif., May 4, 1923.

Geo. P. Schwab, Care Cedar Glen Resort, Tobin, Plumas County, Calif.:

Gray Thorning requesting quotation on carload of San Francisco and Redwood Wire advise

The Sandusky Cement Company."

(NOTE.—Env. attached to original says 'Hotel Trinity, Los Angeles, Calif.')

"Los Angeles, Calif., May 7, 1923.

Mr. L. E. Crawford, 180 Jessie St., c/o Builders' Exchange, San Francisco, Calif.:

Gray Thorning requesting quotation San Francisco and Redwood Wire advice care Hotel Trinity Los Angeles.

George P. Schwaab."

"San Francisco, Calif., May 7, 1923.

George P. Schwaab, Hotel Trinity, Los Angeles, Cal.:

No change Gray Thorning situation since your departure from San Francisco

L. E. Crawford."

[fol. 432]

"Los Angeles, Calif.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

San Francisco exchange advise no change in Gray Thorning situation. Suggest you quote and request permit with order.

George P. Schwaab."

"May 8th, 1923.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

This office will not request permit Suggest you phone Gray Thorning price requesting they accompany order if placed with permit Do not promise immediate shipment

Sandusky Cement Co.

"Redwood City, Calif., May 8, 1923—p. m. 8.26.

Sandusky Cement Co., Cleveland, Ohio:

Schwaab quotes six seventy seven cement FOB docks San Francisco Ship one hundred seventy five barrels quickly Wire acceptance. Gray Thorning Lumber Co."

"May 9th, 1923.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

Gray Thorning request wire acceptance and shipment per your quotation Advise.

Sandusky Cement Company."

1923, May 9, Los Angeles, Calif.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

Suggest you ignore Gray Thorning Wire or advise behind on shipments and stall Please refer my report April eleventh and letter April twentieth on Oakland line and advise

George P. Schwaab."

"Los Angeles, Calif., May 10, 1923.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

[fol. 433] I complied with your telegraphic instructions of eighth and quoted Gray Thorning over telephone My wire of ninth was reply of yours of same date asking to advise

George P Schwaab."

"May 11th, 1923.

Mr. George P. Schwaab, Trinity Hotel Los Angeles, Calif.:

In addition to quoting Gray Thorning did you request them to forward permit with order. Shall we ship them Yes or No?

C. B. Rogers."

Time: 10.35 a. m. May 12, 1923.

Gray Thorning Lumber Co., Redwood City, Calif.:

Your order permit covering not received All orders booked subject to delay Price subject to change without notice account ocean rates increasing. Sandusky Cement Co."

Gray Thorning Lumber Co.

"Redwood City, Cal., May 12, 1923.

Sandusky Cement Co., Cleveland, Ohio.

GENTLEMEN: We are just in receipt of your telegram advising us that our order permit has not been received, consequently you cannot ship our order.

We do not know just exactly what you mean by a permit, but if such means that we have to make an affidavit pertaining to our race, citizenship and ability to pay our bills before we can do business with you, you might as well consider business relations closed.

We have sold directly (and more so indirectly) a considerable quantity of Medusa Cement and have felt a pride in so doing by virtue of the fact that the writer is an Eastern man, being born and raised in West Virginia, not far from your city, consequently we felt somewhat at home in pushing your product.

However, we will have to look to some other white cement, which, no doubt, we can find in short order.

Yours very truly, (Signed) Gray Thorning Lumber Co., per
W. P. Gray. WPG/B."

[fol. 434] That said Clinton B. Rogers, as Sales Manager for the said Sandusky Cement Company did, on July 11, 1923, send a certain letter to W. H. George, Chairman of the Industrial Relations Committee, Builders' Exchange, 185-188 Jessie Street, San Francisco, California, copy of which is attached hereto, made a part hereof, and designated Exhibit 4; that in reply thereto the said Sandusky Cement Company received a letter from said W. H. George as President of the said Builders' Exchange, copy of which is attached hereto, made a part hereof, and designated Exhibit 5; that the said Sandusky Cement Company refused to fill the order of the said Gray, Thorning Lumber Company because the said Gray, Thorning Lumber Company did not obtain a permit from the Industrial Relations Committee of the Builders' Exchange to purchase said cement.

That affiant was informed by said Clinton B. Rogers that it was necessary for a dealer, or consumer, in San Francisco and San Mateo, Alameda and Santa Clara Counties California, to obtain from said Builders' Exchange a permit to purchase said building materials, before the said Sandusky Cement Company would sell.

That certain dealers were black listed by said Builders' Exchange and that said Gray, Thorning Lumber Company was one of them; that his company to-wit: The Sandusky Cement Company was a member of the Builders' Exchange as a matter of business policy and that their sole desire was to cooperate with the members of the Exchange, as all reputable dealers were members thereof, and that the said Sandusky Cement Company did not desire to sell the said Gray, Thorning Lumber Company because it was business policy to sell to reliable dealers who were members of the Builders' Exchange, and that he did not wish, therefore, to incur their enmity by selling

[fol. 435] others; that the reason the said Sandusky Cement Company requested a permit from the said Gray, Thorning Lumber Company was to stall them off and to keep them from purchasing.

That an original permit issued by the Builders' Exchange aforesaid and received by the said Sandusky Cement Company is as follows:

Release for Building Materials No. 39686

"Not good after 15 days from date.

Date: Aug. 11, 1923.

Name: J. S. Guerin & Co.

Location of Job: 720 Folsom.

Materials: 1 car white cement.

Builders' Exchange, (Signed) by W. H. George, Chairman
Industrial Relations Committee."

That the said Sandusky Cement Company received from its agent, George P. Schwaab aforesaid, a certain circular purporting to be issued by the said W. H. George as Chairman of the Industrial Relations Committee of the Builders' Exchange, a copy of which is attached to, made a part hereof, and designated as Exhibit 6.

That affiant has the original documents 1, 2, 3, and 6 in his possession, copies of which are designated 1, 2, 3, and 6, and also the original Permit mentioned in affidavit, and that the original letters and telegrams herein set forth in the body of the affidavit were left by affiant in the possession of the said Sandusky Cement Company at its office in Cleveland, Ohio.

The Builders' Exchange, 180-188 Jessie Street

[fol. 436]

San Francisco, Calif., May 9, 1923.

President's Letter #5

Did you hear the good news? The Jury says that the American Plan Enforcement Act, called the Permit Department, is "not guilty".

This means that the Industrial Relations Committee of The Builders' Exchange will continue to maintain the Permit Department strictly, and every member is asked to please cooperate so as to make the work as simple, easy and effective as possible. If you are a consumer don't ask your dealer for stuff without getting the permit. If you are a dealer don't give the consumer any material until he presents you in hand with the permit.

Let's lighten the duties of the Grievance Committee and keep "fine" money in our own pockets.

Remember, President Harding says:

"Liberty is gone in America when any man is denied by anybody the right to work and live by that work. It does not matter who

denies. A free American has the right to labor without any other's leave."

Please remember that the award of the Impartial Wage Board for the year 1923 says:

"The wage scale now laid down shall go into effect on the first day of January, 1923, and shall remain in force for one year and thereafter until occasion arises for its revision."

It is exceedingly important at this time that all members of The Builders' Exchange observe strictly the Wage Scale. Pay no less and pay no more. It is the Standard Wage Scale of your Exchange and the high cost of building must be held down or the public won't buy our goods.

Don't forget the grand Annual Anniversary Banquet May 19th. If you haven't got your tickets, get them quick from Steve or Heinie. Reservations are going fast. The room holds only 500 and more than 400 reservations are already in, so don't get left as it is going to be the biggest time that the Builders' Exchange ever gave, and that means some big time.

Yours very truly, W. H. George, President.

EXHIBIT #2 TO KAGE'S AFFIDAVIT

The Builders' Exchange, 180-188 Jessie Street

[fol. 437]

President's Letter #9

San Francisco, Calif., July 10th, 1923.

Mr. Berg of the Port Costa Brick Co. brought to the Board of Directors the other day a very valuable suggestion, namely, that every member of the Builders' Exchange print on his letterhead in a good prominent place the words "Member the Builders' Exchange of San Francisco." The Board adopted the good suggestion and it is hoped that every member will cooperate and see that this slogan is on his stationery. Let's boost our Exchange.

On August 6th the question will again come up of increasing the dues of the Builders' Exchange. The increased funds to be used to help the work of the Industrial Association which has made possible financially the present good industrial condition in our city. We should remember that the Industrial Association is financing our Permit Department which is unquestionably the medium of holding the situation level. Every member of the Exchange should give this important question sincere and thorough thought.

The Permit System is still in full force and effect, and time and time again it develops that this is the means of keeping the situation level. The members of the Exchange in all fairness to each one as well as to the rules and principles of the Exchange, are re-

quested to remember this at all times and make it just as strictly a rule of your business as any other rule.

Some plans are on foot which will be announced shortly if found feasible which will make our Exchange the best organization of its kind in the County and make it mean more to the membership than ever before.

Now let's get together along the lines of cooperation and lend the helping hand to make our own business better and our own organization stronger and better than ever.

Yours sincerely, W. H. George, President.

P. S.—Quotation from the Exchange Hour published by the Builders' Exchange of Alameda County:

"Liberty is gone in America when any man is denied by anybody the right to work and live by that work. It does not matter who denies. A free American has the right to labor without any other's leave."—Warren G. Harding, President of the U. S.

EXHIBIT NO. 3 TO KAGE'S AFFIDAVIT

The Builders' Exchange, 180-188 Jessie Street

[fol. 438]

President's Letter #11

San Francisco, Calif., July 12th, 1923.

To all members of the Builders' Exchange:

Pile Drivers, Wharf Builders and Carpenters Union #34, affiliated with the Bay District Council of Carpenters and the Building Trades Council, is out on strike for \$9 a day.

Careful investigation has convinced the Industrial Relations Committee that this is the entering wedge in an attempt of all carpenters affiliated with the Bay District Council of Carpenters and the San Francisco Building Trades Council, to raise the minimum wage to \$9 a day.

It is also noted that carpenters throughout the town are going around to the jobs and stating that they will not work for less than \$9 a day.

Your attention is respectfully called to the Standard Wage Scale of the Builders' Exchange, adopted by the Central Council for the full year of 1923. On this wage scale you will note the standard wage for carpenters is fixed at \$8 a day.

You are respectfully advised that the Industrial Relations Committee, after a hearing held this evening with members of the Wharf & Pile Drivers Association and General Contractors' Association present, have adopted a resolution that:

"Effective Monday morning July 16th, no member of the Builders' Exchange employing Carpenters shall pay other than the standard wage scale, except to Foremen."

Yours very truly, W. H. George, President.

EXHIBIT No. 4 TO KAGE'S AFFIDAVIT

CC. Brown.

July 11, 1923.

Mr. W. H. George, Chairman Industrial Relations Committee, the
Builders Exchange, 180-188 Jessie St., San Francisco, Calif.

Re: permit system

MY DEAR MR. GEORGE: Due to the irregularity of our representative being in your city to secure necessary permits from various dealers entitled to purchase cement under your system, the writer would respectfully ask if it would be possible for you to mail us monthly, to this office, a list of dealers that are in good standing in your organization in order that there may be no delay in getting their shipments to them promptly.

[fol. 439] You realize, of course, that the Sandusky Cement Company markets its products direct to the various dealers in the State of California. Our competitor's product is handled thru a jobber or on a jobbing basis in San Francisco. It is, therefore unnecessary for that manufacturer direct to secure permits. This difference in the method of marketing places us in a somewhat handicapped position.

The writer feels that if you will kindly instruct your office to mail us, each month, a list of the dealers in good standing and immediately upon any dealer being placed on the black list, you so advise us, thus alleviating any possibility of our not working in harmony with your organization.

Our Mr. George P. Schwaab has been transferred to other duties in our company and Mr. George L. Brown is leaving for the coast within the next few days, with instructions to interview you upon his arrival. In the meantime, we would certainly appreciate your issuing instructions in accordance with the above request, if consistent.

Yours very truly, The Sandusky Cement Company. —
—, Sales Manager. CBR:S.

EXHIBIT No. 5 TO KAGE'S AFFIDAVIT

The Builders' Exchange, 180-188 Jessie St., San Francisco, Cal.

July 17th, 1923.

The Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio.

Attention of Mr. C. B. Rogers, Sales Manager

DEAR MR. ROGERS: I have for acknowledgement your letter of July 11th, by the way written on my birthday, and appreciate very much your cooperation. Perhaps a little explanation is necessary. Atlas cement handled by the dealers here is bought by them out-

right and is only delivered to consumers who call at the Permit Dept. securing a permit and presenting it to the dealer, so it comes under our permit system as you can see.

Now, as to your product. There is, and never was any necessity for your representative being in this city to secure necessary permits from the various dealers. The dealers themselves should get the permits and attach them to the orders given your representative just [fol. 440] the same as they do with grey cement. For instance my salesmen never get a permit for our dealer customers. The dealer customer himself goes and gets the permit and attaches it to the order when he gives it to our salesmen.

I think you will find that this will work out to your satisfaction. It does with the rest of us. If it doesn't please let me know again and I will try and solve the problem if there is one. On the other hand, it is not possible to send out a list. In the first place a list as you describe would probably be called a black list, as you very fairly named it and would get us all in trouble, and in the second place in these troublesome times the situation changes so quickly that a list would hardly cover the necessity.

Believe me we thank you for your cooperation and wish to cooperate with you, and if these suggestions do not work out to your entire satisfaction, please let me know again.

Yours very truly, (Signed) W. H. George, President.
WHG-b.

EXHIBIT NO. 6 TO KAGE'S AFFIDAVIT

The Builders' Exchange, 180-188 Jessie Street, San Francisco, Cal.

May 18, 1923.

Geo. P. Schwaab, Esq., Hotel Stewart, San Francisco, Calif.

DEAR SIR: AS announced to you in President's letter #5, the Permit System was found "not guilty" in our Superior Court and is in full force and effect. The purpose of this letter is to remind you that the Permit System covers cement, lime, plaster, ready-mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene's Cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

Also that it is in effect for the counties of San Francisco, San Mateo, Santa Clara, Alameda and the city of Richmond.

Manufacturers must require San Francisco Builders' Exchange permits from all dealers to whom they ship in the above mentioned territories, except that permits issued to dealers for Alameda County and the City of Richmond by the Oakland Builders' Exchange will be satisfactory.

All dealers receiving goods under these dealer permits mentioned above must have on file in their office a permit before they make any deliveries to any consumer or other dealer.

[fol. 441] Auditor's checking will be intensified at once, and it will be necessary to prefer charges against anybody not strictly complying with the above instructions.

We earnestly plead with you to cooperate with this Committee so that the Permit System may become absolutely effective for the carrying out of the American Plan in the building industry, and it is sincerely hoped that it will not be necessary to prefer charges against any one for dereliction of duty.

"Keep "fine" money in your pocket".

Yours very truly, (Signed) W. H. George. W. H. George,
Chairman Industrial Relations Committee. WHG-b.

AFFIDAVIT OF A. KNOWLES ON BEHALF OF COMPLAINANT

A. Knowles, being first duly sworn, deposes and says:

That for 29 years last past he has been and is now engaged in the business of Contracting Plasterer in the City and County of San Francisco, State of California, and at the present time has his place of business in the Call Building, in said City of San Francisco; that in the year 1922, while affiant was engaged in doing the plastering under a contract on the Loewe's & Golden Gate Theaters in the said City of San Francisco, he had placed orders for hardwall cement with the Pacific Portland Cement Company which has its manufacturing establishment at Mound House, State of Nevada; that the said orders of affiant were on carload lots and said orders were delivered to affiant in carload lots; that during said year of 1922 and after having received several cars of said plaster from the said Pacific Portland Cement Company, affiant was notified by the Pacific Portland Cement Company in San Francisco, that another car had arrived for affiant, but that before delivery of said car of plaster could be made to affiant, it would be necessary for affiant to obtain from the Builders' Exchange of San Francisco a permit; that affiant did not [fol. 442] obtain one from the Builders' Exchange; that affiant was notified that because of his not obtaining said permit said car of plaster would not, and could not be delivered to him; that affiant did not receive said car of plaster and ever since said date has been unable to obtain from the said Pacific Portland Cement Company any plaster for use in San Francisco, San Mateo, Santa Clara and Alameda Counties without a permit from the Builders' Exchange of San Francisco, and affiant has not obtained any permit and therefore has not received, or been able to get any plaster from said Pacific Portland Cement Company;

That affiant is also engaged in the business of buying and selling building materials, and has been for several years last past; that from his experience it has been impossible to obtain cement from cement companies whose factories are located outside of the State of California, without first obtaining a permit from the said Builders' Exchange of San Francisco.

AFFIDAVIT OF G. B. PASQUALETTI ON BEHALF OF COMPLAINANT

G. B. Pasqualetti, being first duly sworn deposes and says:

That for more than nineteen years last past he has been and now is a resident of the City and County of San Francisco, State of California, and is at present residing at 2330 Larkin Street in the said City of San Francisco; that for more than thirteen years last past he has been and now is a citizen of the United States, and for more than sixteen years last past he has been and now is engaged in the business as General Contractor in the said City and County of San Francisco, State of California.

That in the fore part of the year 1922, affiant commenced the construction of a building situated on the North side of Geary Street, between Jones Street and Leavenworth Street in the said City of San Francisco, for G. Rossi & Company, and during the month of March, 1922, he entered into a contract with C. Peterson & Company [fol. 443] for the performance by said C. Peterson & Company of the plumbing in the said building; that approximately ten days or two weeks after the making and entering into aforesaid contract, affiant was approached on his job aforesaid by two men representing themselves to be Inspectors for the Industrial Association of San Francisco, one of the defendants in the above entitled action, who then and there notified this affiant that it would be necessary for affiant to cancel his aforesaid contract which he had entered into with C. Peterson & Company, for the reason that the said C. Peterson & Company were not operating under the American Plan, otherwise affiant could not obtain the building materials necessary for the construction of the aforesaid building; they at said time advised affiant to go to the headquarters of the Industrial Association of San Francisco, for the purposes of settling the matter concerning the aforesaid contract with C. Peterson & Company; whereupon affiant the following day proceeded to the headquarters of the said Industrial Association of San Francisco, at their offices in the Santa Fe Building, on Market Street in the City of San Francisco, and there affiant met a group of three or four men whose names affiant does not remember, and who advised affiant that the said C. Peterson & Company were not operating under the American Plan and requested affiant to cancel said contract with the said C. Peterson & Company, asking affiant if he would stand any of the loss that was occasioned thereby, and were informed by affiant that he would not.

Whereupon the aforesaid Committee or group of men advised affiant that the Industrial Association of San Francisco would protect him from all loss if he would cancel said contract with C. Peterson & Company, and a man named Max Kuhl, as attorney for [fol. 444] the Industrial Association of San Francisco drew up the necessary Contract of Indemnity, which contract this affiant does not now have in his possession, and does not know where it is, although affiant believes that said contract has been destroyed.

After the receipt of the aforesaid contract of indemnity affiant then notified C. Peterson & Company, cancelling the aforesaid con-

tract, and shortly thereafter the said C. Peterson & Company brought suit against affiant and in said action levied an attachment upon the funds and bank accounts of this affiant in two banks, namely the Bank of Italy and the Banca Popolare Fugazi, and also attached an Apartment House and another house owned by affiant and situated in the City of San Francisco, State of California; that at the trial of the action brought by said C. Peterson & Company against, affiant, this affiant was represented according to the aforesaid agreement with the Industrial Association of San Francisco, by Max Kuhl, believed by affiant to be the attorney for the Industrial Association of San Francisco. That prior to said trial, all of the aforesaid attachments were released by bonds furnished by and through the Industrial Association of San Francisco; that said action was compromised, the said C. Peterson and Company agreeing to accept and take Fourteen hundred dollars (\$1,400.00) in full settlement of all claims for damages against this affiant, which sum and amount, together with all other costs, was agreed to be paid by the said Industrial Association of San Francisco, and affiant believes and avers was fully paid by said Industrial Association of San Francisco; that affiant did not pay the said Max Kuhl any sums of money for his services while acting as attorney for affiant in said action.

That affiant after the cancellation of the aforesaid contract with [fol. 445] the said C. Peterson & Company, made and entered into a contract for the plumbing work on said building, with one A. J. Silva, which contract for plumbing was completed and the building carried on to completion.

That at the time of the contract with the said C. Peterson & Company, affiant was a member of the Builders' Exchange of San Francisco.

AFFIDAVIT OF W. C. REVEAL ON BEHALF OF COMPLAINANT

W. C. Reveal, being first duly sworn deposes and says:

That for the last two years last past he has been and is now the General Sales Agent of the Tacoma & Roache Harbor Lime Company, a corporation, whose place of business and principal office is at Roache Harbor, Washington, and at different times during the last twenty-seven years has acted as said General Sales Agent for the State of California, for the aforesaid corporation; that the offices of affiant as said sales agent has been and is now at 216 Pine Street in the City of San Francisco, State of California; that he is acquainted with Gordon Chamberlain and has been for twenty years last past; that affiant has read the affidavit of Gordon Chamberlain made August 20th, 1923, and states that the said 250 barrels of lime mentioned therein was invoiced to the said Civic Center Supply Company mentioned in said affidavit, under which name the said Gordon Chamberlain transacts his business; that while the said 250 barrels were invoiced to the said Civic Center Supply Company, the said 250 barrels were not placed on the bill of lading; that at said time and for some time prior thereto the Atlas Mo-tar

Company had a contract with the Tacoma Roche Harbor Lime Company to have first call on all of the lime produced by and shipped to the said City of San Francisco by the said Tacoma and Roche [fol. 446] Harbor Lime Company up to 3,000 or 3,500 barrels per month; that said 250 barrels heretofore mentioned was shipped on the Steamer Edna and on its arrival the said Atlas Mortar Company, and other old customers desired all of the lime on said shipment and under said contract all of said lime was delivered to the said Atlas Mortar Company and to said other old customers, including the 250 barrels invoiced to the said Civic Center Supply Company.

That at that time affiant did tell the said Gordon Chamberlain that the said Tacoma and Roche Harbor Lime Company would be likely to lose the business of the said Atlas Mortar Company if it sold lime to the said Civic Center Supply Company without supplying the Atlas Mortar Company in full; that since said time, however, that is since on or about the 15th day of February, 1923, the said Tacoma and Roche Lime Company has sold and delivered to the said Civic Center Supply Company — barrels of lime; that all of said lime has been sold and delivered to the said Civic Center Supply Company without a permit from the said Builders' Exchange of San Francisco; that the said Tacoma and Roche Harbor Lime Company has been threatened with prosecution by the Builders' Exchange of San Francisco, for selling and delivering said barrels of lime without a permit as aforesaid, but to date no prosecution has taken place.

Affiant further deposes and says that because all sales of lime made by the said Tacoma and Roche Harbor Lime Company to the said Civic Center Supply Company, the Gray Thorning Lumber Company of Redwood City, California, and M. Cambiano, the said Tacoma and Roche Harbor Lime Company was threatened with prosecution of charges and expulsion from the said Builders' Exchange of San Francisco, and affiant has been interviewed by officials, directors or members of a committee of said Builders' Exchange [fol. 447] change, to-wit: Alex Mennie, Thomas Campbell and Mr. Jamieson, and was informed by the said Alex Mennie that trial under the aforesaid charges would not occur until after the disposition of the action of the United States of America vs. The Industrial Association of San Francisco, et al., in the above entitled court.

AFFIDAVIT OF W. C. REVEAL ON BEHALF OF COMPLAINANT

W. C. Reveal, being first duly sworn deposes and says:

That for the two years last past he has been and is now the General Sales Agent of the Tacoma & Roche Harbor Lime Company, a corporation, whose principal place of business and office, is at Roche Harbor, Washington; that the office of affiant is at 216 Pine Street, San Francisco, California.

That affiant received through the mail in an envelope addressed to the Tacoma and Roche Harbor Lime Company, a certain circular letter from the Builders' Exchange of San Francisco, which is attached hereto and made a part hereof and designated Exhibit 1.

That on said May 18th, 1923 the said Tacoma and Roche Harbor Lime Company was and for some time prior thereto had been and is now, a member of the Builders' Exchange of San Francisco.

Copy

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., May 18, 1923.

Tacoma & Roche Harbor Lime Co., 180 Jessie Street, San Francisco, Calif.

Attention of Mr. Reveal

[fol. 448] GENTLEMEN: As announced to you in President's Letter #5, the Permit System was found "not guilty" in our Superior Court and is in full force and effect. The purpose of this letter is to remind you that the Permit System covers cement, lime plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene's Cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

Also that it is in effect for the counties of San Francisco, San Mateo, Santa Clara, Alameda, and the City of Richmond.

Manufacturers must require San Francisco Builders' Exchange permits from all dealers to whom they ship in the above mentioned territories, except that permits issued to dealers for Alameda County and the City of Richmond by the Oakland Builders' Exchange will be satisfactory.

All dealers receiving goods under these dealer permits mentioned above must have on file in their office a permit before they make any deliveries to any consumer or other dealer.

Auditor's checking will be intensified at once, and it will be necessary to prefer charges against anybody not strictly complying with the above instructions.

We earnestly plead with you to cooperate with this Committee so that the Permit System may become absolutely effective for the carrying out of the American Plan in the building industry, and it is sincerely hoped that it will not be necessary to prefer charges against any one for dereliction of duty.

"Keep 'fine' money in your pocket."

Yours very truly, (Signed) W. H. George. W. H. George,
Chairman. WHG-b.

AFFIDAVIT OF EDWARD JOHN SCHNEIDER ON BEHALF OF COM-
PLAINANT

Edward John Schneider, being first duly sworn, deposes and says:

That his place of residence is 66 Hillcrest Road, Berkeley, California; that for twelve (12) years last past he has been and now is the Contracting Manager of the Bridge and Building Department of the United States Steel Products Company, a corporation engaged among other things in the business of selling fabricated [fol. 449] structural steel to its customers for use in the construction of buildings and bridges in the City and County of San Francisco, State of California, and generally throughout the State of California; that he, in the capacity aforesaid, and during said period, has been in charge of the aforesaid sale of fabricated structural steel in the City of San Francisco, and generally in the State of California, and in such capacity has negotiated contracts for and in behalf of said Company in the said City and County of San Francisco, and throughout the State of California, for the sale of said fabricated structural steel used in the construction of buildings and bridges in the City and County of San Francisco, and vicinity; that practically all orders or contracts for fabricated structural steel to be used in the construction of buildings and bridges in the said City and County of San Francisco, made by him on behalf of said United States Steel Products, are, and have at all times herein mentioned, been for delivery at said City and County of San Francisco, and at such other place as may be convenient, under the circumstances, from the various plants of American Bridge Co., all of which are in the States east of the Rocky Mountains and outside of the State of California.

That none of said fabricated structural steel delivered by the said United States Steel Products Company as aforesaid is manufactured within the State of California or shipped from said factories or shops by the said United States Steel Products Company to its yards or warehouses in the State of California to be kept in or sold from stock; that no sales are made by said Company of said fabricated structural steel made or kept in stock within the State of California, but that said Company does a very large business in supplying to its customers for use in the construction of buildings and bridges in [fol. 450] San Francisco and vicinity, fabricated structural steel manufactured outside of the State of California and shipped into the State of California, and particularly to the City and County of San Francisco and the vicinity thereof, after said fabricated structural steel has actually been ordered.

AFFIDAVIT OF Z. T. THORNING ON BEHALF OF COMPLAINANT

Z. T. Thorning, being first duly sworn on oath deposes and says:
That he is the Secretary of the Gray, Thorning Lumber Com-

pany, which is engaged in the business of buying and selling building material at Redwood City, County of San Mateo, State of California, and has been for 13 years last past.

That about one year last past he placed an order for one (1) car of Empire Plaster with the Pacific Portland Cement Company, a corporation, which manufactures said Empire Plaster at a plant situated at Moundhouse, State of Nevada; that said order was placed by letter, copy of which affiant does not have; that a Mr. Knox, Manager of the Pacific Portland Cement Company at its place of business in the city of San Francisco, California, telephoned to affiant and advised affiant that it was impossible for the Pacific Portland Cement Company to ship from Moundhouse, Nevada to the Gray, Thorning Lumber Company, said carload of hardwall plaster, without the said Gray, Thorning Lumber Company first obtaining from the Builders' Exchange of San Francisco, a permit; that the Gray, Thorning Lumber Company did not obtain said permit from the Builders' Exchange because in order to obtain said permit it was necessary for the Gray, Thorning Lumber Company to subscribe to a pledge that it would sell said hardwall plaster only to those who agreed to support the American Plan, or to those who had obtained [fol. 451] a permit from said San Francisco Builders' Exchange or the Builders' Exchange of San Francisco, California, to which the Gray, Thorning Lumber Company did not desire to be bound.

That William J. Feary, Representative of the Western Lime and Cement Company, a corporation, in 1922 refused to sell lime to the Gray, Thorning Lumber Company without its first obtaining a permit from the Builders' Exchange, likewise the Tacoma and Roche Harbor Lime Company, acting through its representative in San Francisco, Mr. W. C. Reveall.

That also the Gray, Thorning Lumber Company was refused lime by Mr. Horton, of the Portland Lime and Cement Company, which produces lime at Blubber Bay, Vancouver, B. C.; also in 1922 the Jumbo Plaster Company, acting through its Manager, W. P. Payne, Sr. after shipping two carloads of hardwall plaster from its plant at Sigurd, Utah, to the Gray, Thorning Lumber Company, at Redwood City, California, refused to accept any further orders from the Gray, Thorning Lumber Company, because the Gray, Thorning Lumber, Company had not obtained a permit from the San Francisco Builders' Exchange, but gave as a reason for said refusal a partial destruction of its plant. However, within six (6) weeks thereafter, five (5) cars were shipped by said Jumbo Plaster Company to the Henry Cowell Lime and Cement Company at San Jose, California.

AFFIDAVIT OF Z. T. THORNING ON BEHALF OF COMPLAINANT

Z. T. Thorning, being first duly sworn deposes and says:

That he resides at 614 Hopkins Avenue, Redwood City, California, that he is a member of the firm of the Gray, Thorning Lum-

ber Company, engaged in the building material business, at 2 Redwood Avenue, in said City; that he has been so engaged in the same business for the past thirteen years, and that he has personal [fol. 452] knowledge of the facts hereinafter stated; that heretofore and previous to May 8th, 1923, his firm wired the Sandusky Cement Company, Sandusky, Ohio for a price on one carload of Medusa cement f. o. b. dock, San Francisco. After sending said telegram to Sandusky, Ohio, Mr. Schwaab of Los Angeles, California, representing the Sandusky Cement Company, called him on the telephone and said that his company had received his telegram requesting quotation on cement. Schwaab quoted a price of \$8.77 f. o. b. Dock, San Francisco, and said it would be necessary for his company to secure a permit from the Builders' Exchange of San Francisco before it could get the cement.

On May 8th, 1923 he sent the following telegram to the Sandusky Cement Company:

"Redwood City, Calif., May 8th, 1923.

Sandusky Cement Co., Cleveland, Ohio:

Schwaab quotes six seventy seven cement f. o. b. docks San Francisco ship one hundred seventy five barrels quickly wire acceptance.
Gray Thorning Lumber Company."

On May 12th, 1923, he received the following reply by telegraph in answer to his telegram of May 8th, 1923:

"Cleveland, Ohio, May 12, 1923.

Gray Thorning Lumber Co., Redwood City, Calif.:

Your order permit covering not received all orders booked subject to delay price subject to change without notice account ocean rates increasing.

Sandusky Cement Co."

Deponent says that up to the present time he has been unable to obtain cement from the Sandusky Cement Company, and at no time received a permit from the Builders' Exchange of San Francisco.

AFFIDAVIT OF H. S. WATHEN ON BEHALF OF COMPLAINANT

H. S. Wathen, being first duly sworn on oath deposes and says:

That for three years last past he has been and is now, Manager, [fol. 453] of what is known as the Fenestra Construction Company, a corporation whose principal office is situated in Detroit, Michigan, affiant being the manager of what is called the San Francisco branch office, which branch office is now located at 64th and Doyle Streets, Oakland, California, where it has been for three months last past,

prior to which time the said office was located at 251 Kearney Street and 68 Post Street in the City of San Francisco, California; that the said Fenestra Construction Company is a subsidiary corporation whose business is to install steel windows manufactured by the Detroit Steel Products Company, a corporation whose factory and principal office is in the said city of Detroit, Michigan.

That as said Manager, affiant knows that prior to July 15, 1923, all of the products of the said Detroit Steel Products Company sold and delivered in said city of San Francisco, were manufactured at the said factory in Detroit, Michigan, and shipped direct to the job for which said steel windows were ordered, or direct to the contractor ordering them; that said steel windows have been installed within the last ten years in the various buildings in the said City of San Francisco, and in the State of California.

That within the two months last past the said Detroit Steel Products Company has established a factory in the city of Oakland, California, for the purpose of manufacturing the said steel windows.

That at no time or at all has the Fenestra Construction Company been a member of the Builders' Exchange, or of the Industrial Association of San Francisco, and is not at the present time.

AFFIDAVIT OF EARNEST G. WENTE ON BEHALF OF COMPLAINANT

Earnest G. Wente, first being duly sworn deposes and says:

[fol. 454]. That he resides in Livermore, California, and that he is a co-partner in the Independent Warehouse Co. of the said Town, that he is engaged in the buying and selling of lime, plaster, cement and other materials and that he has been so engaged in the said business in the said town of Livermore for ten (10) years last past.

That heretofore, and sometime during the year of 1922, John Bouse came to his office in Livermore and purchased a carload of cement. Sometime after he had purchased this cement someone in San Francisco called him (Wente) on the telephone and told him that Mr. Bouse was not entitled to purchase cement at Livermore, that he Bouse was in bad with the Builders' Exchange on account of labor troubles in San Francisco and that the safe thing for him to do was not to let Bouse have the cement.

Sometime after receiving this telephone message an agent representing Borchers Bros. of San Jose, California, called at his office and told him that he could not sell building materials to be used on union jobs. After having had this conversation with Borchers Bros. representative he told Mr. Bouse that he would not let him have the carload of cement, or any other building material, that he did not want to get into trouble with the Builders' Exchange of San Francisco.

He further stated that he is a dealer in Blubber Bay Lime manufactured near Victoria, B. C., Empire Brand Plaster manufactured at Mound House, Nevada and Pacific Portland Cement.

AFFIDAVIT OF A. KNOWLES ON BEHALF OF COMPLAINANT

A. Knowles, being first duly sworn deposes and says:

That he is now and, for several years last past, has been engaged in business as a plastering contractor in the City and County of San Francisco, State of California, and having his office in the City, [fol. 455] State and County of San Francisco; that he has also entered into and performed contracts for plastering in various cities in the State of California, and is familiar with conditions relating to plasterers and the supplying of plaster in and around Santa Clara, San Mateo, Alameda, Contra Costa and San Marin Counties, as well as the City and County of San Francisco; that affiant is a large user of plaster and knows the sources of supply and the places of manufacture and conditions of supply and demand of plaster in and around the said City of San Francisco and the said Bay Counties, above referred to, and also knows the places where plaster is made in the State of California, and where it has been made for several years last past; that from said knowledge affiant avers that of the plaster used in building operations in the City and County of San Francisco, that not more than one per cent is and has been produced and made in the State of California; that a greater per cent of said plaster used in the said City and County of San Francisco is made and manufactured in the States of Nevada, Utah, Montana and Washington.

That affiant is and, for some time last past, has been Vice-President of the Golden Gate Building Material Company, a corporation, organized and existing under the laws of the State of California; that on or about the 4th month, 1922, the said Golden Gate Building Material Company ordered from what is known as the Three Forks Portland Cement Company at Hanover, Montana, a certain amount of Plaster; that said material ordered was to be shipped by railroad to Portland, Ore., thence carried by ship to the City of San Francisco, and there received by the Golden Gate Building Material Company, to whom said materials were to be consigned; that shortly after making said agreement with the said Three Forks Portland Cement Company said Golden Gate Building Material [fol. 456] Company was notified by the McCormick Steamship Company of an increase on said freight, and was advised by Mr. McCormick of said McCormick Steamship Company that such increase in rates was necessary for the reason that the Golden Gate Building Material Company was not a member of the Builders' Exchange, and if such Steamship Company transported said building materials for and to the said Golden Gate Building Material Company said Steamship Company would lose transportation business of certain business concerns who were in sympathy with the enforcement of what is known as the American Plan in the said City of San Francisco; that shortly thereafter the Golden Gate Building Material Company was notified by the said Three Forks Portland Cement Company that it could not fill said order for the said Golden Gate Building Material Company.

That in October, 1922, the Golden Gate Building Material Company purchased through W. K. Hughes, a broker whose place of business is in the City and County of San Francisco, fifteen hundred (1,500) barrels of lime to be manufactured by and sent from the establishment of the Perie Lime Syndicate, Victoria, B. C.; that said lime was to be shipped to San Francisco from said plant near Victoria, B. C., consigned to the Golden Gate Building Material Company; that thereafter said Hughes advised affiant and other officers of the Golden Gate Building Material Company, aforesaid, that it would be impossible or doubtful if he, the said Hughes, could have said lime supplied to said Golden Gate Building Material Company on account of the opposition of the Industrial Association of San Francisco, one of the defendants herein, said information having been conveyed to the said Hughes by one Levy and Fagan, who approached the said Hughes as a representative of the said Industrial Association of San Francisco. Thereupon the said Golden Gate Building Material Company released the said [fol. 457] Hughes from his obligation to supply the said Golden Gate Building Material Company with said lime.

That affiant during the years 1921 and 1922 and for many years prior thereto, as heretofore stated, has been engaged as a plastering contractor in the City and County of San Francisco, and as such has performed such plastering contracts on large and important buildings in the said City of San Francisco aforesaid, and among those are the Golden Gate Theater and Loew's Warfield Theater; that at the time affiant was executing his plastering contract on said theaters he was notified by Wm. H. George, President of the Builders Exchange of San Francisco, one of the defendants herein, that affiant must immediately adopt the American Plan, discharge union plasterers employed by him working on said theaters who would not abide by the American Plan, and if affiant failed to do so affiant could not obtain plaster from any of the members of the Builders' Exchange or the Industrial Association, and that every effort would be used to prevent him from getting plaster in order to carry out said contracts on the aforesaid theaters; that affiant requested that he be allowed to finish his said contract on said theaters with the men that were then in his employ and pledge himself to abide by the American Plan thereafter, should he be allowed to finish said contract with the men then in his employ; that such request of affiant was refused by the said Wm. H. George, said President of the said Builders' Exchange of San Francisco and as Chairman of the Industrials Relations Committee thereof.

That affiant is informed by Francis O'Reilly, J. E. Connell, George MacGruer, a member of the partnership of MacGruer and Simpson, and Peter Bradley, all of whom are plaster contractors and were plaster contractors for several years last past in the City [fol. 458] and County of San Francisco; that they and each of them were under the same disabilities as herein set forth relating to affiant and the carrying on of the building contracts and purchase of building materials; that, therefore, the aforesaid parties and affiant organized what is known as the Golden Gate Building

Material Company, a corporation, for the purpose of purchasing, in the best manner possible, plaster and other building materials necessary for the use of the aforesaid parties and affiant in carrying on building operations in the said City and County of San Francisco and there about; that it has been impossible since the organizations of said Company for said Company to purchase from many of the members of the Builders' Exchange of San Francisco plaster or building materials, either with or without a permit obtained from the said Builders' Exchange of San Francisco; that such Golden Gate Building Material Company applied for membership in November, 1922, in the said Builders' Exchange of San Francisco, but said application of membership was refused; that all of the aforesaid mentioned parties who organized the said Golden Gate Building Material Company are now members of the Builders' Exchange of San Francisco and, although they are said members, the said Golden Gate Building Material Company cannot purchase from any member of the said Builders' Exchange or Industrial Association, and some of the defendants herein, any building materials on a permit obtained by any of the aforesaid organizers of the Golden Gate Building Material Company; that said Golden Gate Building Material Company did, in 1923, obtain five permits for material from the said Builders' Exchange of San Francisco, and on said permit did seek to purchase from the Pacific Portland Cement Company, and also the Henry Cowell Lime & Cement Co., a defendant herein, cement, as called for in said permit, but was refused sales by the said Pacific Portland Cement [fol. 459] Company, and also by the Henry Cowell Lime and Cement Co.

AFFIDAVIT OF W. K. HUGHES ON BEHALF OF COMPLAINANT

W. K. Hughes, being first duly sworn deposes and says:

That he is now and for two years last past has been engaged in business as broker, importer and exporter and has handled building materials, among which are lime and cement, and during said period has been thus engaged in the City and County of San Francisco, State of California.

That on or about October 2nd, 1922, the Golden Gate Building Material Company, by and through them entered into a contract with the said affiant, whereby the said Golden Gate Building Material Company agreed to purchase by and through affiant fifteen hundred (1,500) barrels of lime, which lime it was understood between affiant and said Company was to be shipped from a place situated near Victoria, B. C., by boat, consigned to the said Golden Gate Building Material Company, and was to be delivered direct to said Company in the said City of San Francisco.

That shortly after the entering into said agreement affiant was approached by one Leon Levy and one Paul I. Fagan, whom affiant is informed, believes, and upon such information avers were repre-

representatives or employees of the Industrial Association of San Francisco, and as such advised affiant that they desired to purchase his contract for the Industrial Association of San Francisco, one of the defendants herein. Affiant refused to sell or assign said contract to the said Industrial Association, without first consulting the proper officers of the said Golden Gate Building Material Company, whereby the said Fagan and Levy made such statements to affiant as to cause him to infer that unless shipment were sold to them it might be impossible [fol. 460] to get delivery, according to terms of said agreement or law. Whereby affiant advised officers of the Golden Gate Building Material Company of said conversation with the said Levy and Fagan, and upon the earnest solicitation of affiant the said Golden Gate Building Material Company released affiant from said contract; whereupon affiant advised the Industrial Association of San Francisco that said contract with the said Golden Gate Building Material Company had been canceled, and that affiant, by reason of having been compelled to cancel said contract, had suffered a loss of the commission involved in the sale of said lime and made demands upon said Leon Levy for payment of said commission.

That thereafter affiant received from Max Kuhl, as attorney for the said Industrial Association, a letter which is attached hereto and made a part hereof and designated as Exhibit One, in which letter was enclosed a check for the sum of Two Hundred Forty Dollars (\$240.00), the amount of affiant's demand upon Leon Leevy, which was the commission of sixteen cents (16¢) a barrel on said fifteen hundred (1,500) barrels of lime.

That on August 3, 1922, affiant, as broker, had sold and later delivered to the said Golden Gate Building Materials Company one hundred (100) barrels of Lime, which was purchased from Pirie Northwest Lime Syndicate, Victoria, B. C., from whom the aforesaid fifteen hundred (1,500) barrels of Lime were purchased to fulfill the above contract of October 2nd, 1922, but not delivered.

November 1st, 1923.

Mr. Leon Levy, care Jules Levy & Co., 733 Market St., San Francisco.

[fol. 461] DEAR SIR: Relative to the matter of fifteen Hundred barrels of Lime.

We have talked this matter over with Mr. Knowles of Golden Gate Building Materials Co., and he has stated that inasmuch as our people were not able to make delivery in contract time, they were forced into the Industrial Association and now have no men to work, consequently have no need for Lime and refuse to accept the Lime unless we can force them to do so under our contract terms. As shipment was supposed to have been made between the dates of October 15th and 20th, it will not be possible to strictly comply with the terms of our contract, except in so far as the situation beyond the control of the manufacturers would affect the sale of this contract.

Our people in Victoria due to the excess freight demanded by the Border Nelson are quite willing to cancel this sale, and resell in their market in B. C. This it seems would be agreeable to Mr. Knowles in view of his statement, and also would affect a saving to our suppliers on the excess amount of freight, but it leaves us in a position of being out 16¢ per barrel on fifteen hundred barrels, or \$240.00. The excess freight by Border Nelson would be \$1.50 per ton or 15¢ per barrel, and it seems that Knowles does not care to have the Lime shipped this way in view of the delays in transit, and the possibility of it arriving in bad condition.

In view of your statement that you would be willing to pay us our brokerage or the excess amount of freight which is practically equivalent to our brokerage, we are wondering whether it would not possibly be better to suggest your doing this and cancelling the transaction all around. Particularly in view of the fact that if we wait for a direct boat which does not seem to be possible to obtain at the moment, the Lime that is already manufactured will not improve by waiting.

Will you kindly give this matter your consideration, and advise us at an early date what you think would be the best way out of this situation.

Yours very truly, W. K. Hughes & Co. (S.) W. K. Hughes,
President. WKH. RC.

EXHIBIT 1 TO HUGHES' AFFIDAVIT

Industrial Association of San Francisco, Santa Fe Building

November 2, 1922.

W. K. Hughes & Co., 485 California Street, San Francisco, California.

GENTLEMEN: Herewith please find check of the Industrial Association [fol. 462] in the sum of \$240.00, to cover your loss of 16¢ per barrel on 1,500 barrels of Lime that was cancelled by the Golden Gate Building Material Company.

We are happy to say we have made an arrangement with the local plasterers which will securely put San Francisco on an open industrial basis, and, in our arrangement during the experimental period of working under open shop, we have assumed certain possible losses and existing obligations to these plasterers. We feel that probably this comes fairly within the scope of our obligation to the plasterers.

Yours very truly, (Signed) Max J. Kuhl, General Counsel.
MJK:G.

Encl.

"For Sound Industrial Relations."

AFFIDAVIT OF O. C. BARRYMORE ON BEHALF OF COMPLAINANT

O. C. BARRYMORE, being first duly sworn, deposes and says: That since January 1, 1923, he has been, and is now, the Sales Manager of the Golden Gate Building Material Company, a corporation, organized under the laws of the State of California, having its place of business at 540 8th Street, in the City of San Francisco, State of California; that the business of said corporation is the buying and selling of building materials;

That for 24 months prior to January 1, 1923, affiant was the manager of the J. E. Lennon Lime & Cement Company, whose place of business is at 352 Church Street, in said City of San Francisco; that while acting in the capacity of said Manager, and in the month of December, 1922, affiant saw and read a certain letter written by Wm. H. George, the President of the Builders' Exchange of San Francisco, addressed to the J. E. Lennon Lime & Cement Company, advising the said company that the aforesaid Golden Gate Building Material Company has made an application to the Builders' Exchange of [fol. 463] San Francisco for membership therein, and that he, the said George, enclosed a copy of the letter of the Henry Cowell Lime and Cement Company objecting to the Builders' Exchange accepting the application for membership therein by the said Golden Gate Building Material Company; that in said letter the said Wm. H. George advised the J. E. Lennon Lime & Cement Company to send a similar letter of objection to the said Builders' Exchange;

That affiant was advised by Wm. Feary, who is the Manager of the Western Lime and Cement Company, that said company received a similar letter from the said Wm. H. George, and that the said Western Lime and Cement Company had written in conformity therewith its objections to the said Golden Gate Building Material Company becoming a member of the Builders' Exchange, and sent said letter to the Builders' Exchange of San Francisco.

Affiant was also advised by Ralph Rupert, who was at that time the salesman of the Atlas Mortar Company, that said company had also received a similar letter to the one heretofore described, from the said Wm. H. George, in which was enclosed a copy of the said letter of the Henry Cowell Lime and Cement Company to the Builders' Exchange, and in conformity with said request the said Atlas Mortar Company had written and sent its objections to the Builders' Exchange, to the application of the Golden Gate Building Material Company for membership in said Exchange.

Affiant was also informed by the representative of J. S. Guerin and Theodore Wolters of the Pacific Portland Cement Company that they respectively had received similar letters from the said Wm. H. George, in which were enclosed copies of the letter of the Henry Cowell Lime and Cement Company written to the Builders' Exchange;

That all of the aforesaid corporations or individuals who had received said letters from the said Wm. H. George were and are dealers in the City and County of San Francisco, in Cement, Lime

and Plaster, and together with the said Henry Cowell Lime and Cement Company, are now competitors and have been competitors of the said Golden Gate Building Material Company in the sale of Cement, Plaster and Lime, in the City and County of San Francisco;

That affiant is informed, and believes, that the said J. S. Guerin, J. E. Lennon Lime & Cement Company, Pacific Portland Cement Company, did not send objections to the said Builders' Exchange to the said Golden Gate Building Material Company becoming a member thereof;

That in the month of May, 1923, the application of the Golden Gate Building Material Company, was rejected by the said Builders' Exchange of San Francisco;

That since the time of its incorporation in the month of June, 1922, it has been unable to purchase from any of the aforesaid members of the Builders' Exchange, any lime, Cement or Plaster, on account of the fact that it has not had a permit from the Builders' Exchange, and since the rejection of its application to become a member of the said Builders' Exchange, it has been unable to purchase any Lime, Cement or Plaster from any members of the said Builders' Exchange;

That on February 27, 1923, a contract was entered into between the Golden Gate Building Materials Company and the Standard Gypsum Company, a corporation which manufactures plaster at Ludwig, Nevada, and sells and ships to many dealers, among which are firms and dealers in the City and County of San Francisco, State of California; said contract is as follows:

"Standard Gypsum Company, Manufacturers of Hardwall, Finish, [fol. 465] Casting Plaster, San Francisco, California. Telephone, Sutter 2653. Main Office, Sharon Building, 55 New Montgomery Street, San Francisco. Works, Ludwig, Nevada.

February 27, 1923.

Golden Gate Building Materials Co., 569 10th Street, San Francisco, Calif.

GENTLEMEN: We beg to acknowledge with thanks your order of this date for—

A. Knowles, Oakland, Calif., 30 tons Standard Fibred Hardwall Plaster.

B. Milano, Ocean View, Calif., 20 tons Standard Fibred Hardwall Plaster; 20 tons Standard Finishing Plaster.

Golden Gate Building Materials Co., San Francisco, Calif., 25 tons Standard Fibred Hardwall Plaster; 15 tons Standard Finishing Plaster; 10 tons Standard Casting Plaster.

This letter can be considered as an acceptance; also as a blanket order for 500 tons of Plaster to be delivered as requested.

The price to be the regular dealer's price, less your commission of \$1.00 per ton and 25 cents additional fixed on this minimum amount of business placed.

The terms as expressed by your Mr. Barrymore; to be bills payable on the tenth of each month following delivery.

Yours very truly, Standard Gypsum Company, (Signed) Ly
W. B. Gray."

That on the aforesaid contract the said Standard Gypsum Company sold and delivered the amounts ordered by the said A. Knowles [fol. 466] and B. Milano, and an additional amount to the Golden Gate Building Material Company aforesaid, making a total of three hundred seventy (370) tons; that your affiant was informed by Mr. Udahl, President of said Standard Gypsum Company, on or about the 25th day of June, 1923, that the Standard Gypsum Company would not finish and fulfill the aforesaid contract and that it would pay any damages resulting from its failure to fulfill said contract and gave as a reason for the refusal to fulfill said contract that dealers in said product in the San Joaquin County would not buy from the said Standard Gypsum Company because the said Standard Gypsum Company was selling the aforesaid Golden Gate Building Material Company, knowing said Golden Gate Building Material Company was not a member of the Builders' Exchange of San Francisco, and had no permit for said plaster.

Affiant avers that the members of the Builders' Exchange of San Francisco sold plaster and lime to dealers and consumers located in the said San Joaquin Valley, without requiring a permit from the San Francisco Builders' Exchange, and will sell said plaster and lime to any one without a permit from the San Francisco Builders' Exchange, provided that said plaster and lime is not used in San Mateo, Alameda, Santa Clara and San Francisco Counties, but it does require a permit to be obtained before a sale is made of plaster to be used in any of the aforesaid counties. On or about August 15, 1923, affiant for the Golden Gate Building Material Company appealed for a permit for cement from the Builders' Exchange of San Francisco, and was refused; that on one day only since January 1, 1923 did the Golden Gate Building Material Company get a permit; that many requests for permits were refused during that period.

[fol. 467] AFFIDAVIT OF WALTER B. LOMAX ON BEHALF OF COM-
PLAINANT

That Walter B. Lomax, being first duly sworn, deposes and says:

That John R. Steffens-Lomax Company, at all times herein mentioned was and is a co-partnership a member.

That affiant herein and at all times mentioned was and is a member of said co-partnership.

That at all times and dates herein mentioned, The Best Bros. Keene's Cement Co. was and is a corporation, engaged in the business of manufacturing what is known as The Best Bros. Keene Cement, and also crude, crushed and refined gypsum products, whose mills

and quarries are situated at Medicine Lodge, Sun City and Kling, all in the State of Kansas; that during the times and dates herein mentioned, said John R. Steffens-Lomax Company was and is factory representative of said Best Bros. Keene's Cement Co., in and for the territory comprising the City and County of San Francisco, and Pacific Coast, and as such has and does receive orders for and sell for The Best Bros. Keene's Cement Company said cement and gypsum products.

That correspondence has taken place between said The Best Bros. Keene's Cement Co., and the said John R. Steffens-Lomax Company, relating to the American Plan, The Builders' Exchange of San Francisco, defendants herein, and the Golden Gate Building Material Company of which;

- Exhibit 1, a letter dated April 26th, 1923;
- Exhibit 2, a letter dated May 7th, 1923;
- Exhibit 3, a letter dated May 22nd, 1923;
- Exhibit 4, a letter dated June 11th, 1923,

are original letters, received by the John R. Steffens-Lomax Company from the said The Best Bros. Keene's Cement Company in the usual course of business; that

- [fol. 468] Exhibit 5, a letter dated May 1st, 1923;
- Exhibit 6, a letter dated May 18th, 1923;
- Exhibit 7, a letter dated June 5th, 1923;
- Exhibit 8, a letter dated June 21st, 1923,

are original copies of letters, sent in the usual course of business by the said John R. Steffens-Lomax Company to the said The Best Bros. Keene's Cement Company.

That in said letters, where the initials G. G. B. M. Co. are used, such initials refer to the Golden Gate Building Material Company, sometimes called the Golden Gate Building Materials Company, engaged in business in the City and County of San Francisco, State of California.

EXHIBIT 1 TO LOMAX'S AFFIDAVIT

The Best Brothers Keene's Cement Company, Medicine Lodge, Kansas

April 26, 1923.

The John R. Steffens-Lomax Co., San Francisco, Calif.

GENTLEMEN: We are just in receipt of letter from Mr. W. H. George of the Henry Cowell Lime & Cement Co. of your city. Mr. George states that a situation has arisen which he thinks we will have to meet and give our attention to, this being that there is a decided protest developing in San Francisco among the recognized building supply dealers against our policy of selling to contractors and unrecognized building supply dealers, referring especially to the fact that we accept orders from and make direct shipments to MacGruer

& Simpson who are contractors only and are not entitled to the same privileges as building supply dealers in obtaining their materials direct from manufacturers. He further points out that the unrecognized Golden Gate Material Company are considered as a "boot-legging" outfit for Union plasterers to obtain their plastering materials from, when recognized building supply dealers will not deal with such plastering contractors.

Mr. George brings several reasons in the form of arguments as to why we will have to either sell solely to the recognized building supply dealers or ignore such as a means of marketing our products and confine our sales to the outlaw plastering contractors.

[fol. 469] We know that the attitude Mr. George has assumed on the question of Labor Unions in San Francisco is and, while we might be inclined to favor the stand he has taken in trying to get open shop conditions in San Francisco, we do not feel that we can turn down orders from MacGruer & Simpson or the Golden Gate Material Co. even if the building supply dealers do not recognize them and object to our dealing direct with them.

It is somewhat difficult for us to reach a decision as to what would be best for our interests as affecting the San Francisco markets. It has always been our policy, so far as we could consistently do so, to deal only with the recognized building supply dealers, but the conditions in San Francisco are evidently somewhat different to conditions in other cities and just what would be best for us to do in this matter is hard for us to reach a conclusion upon.

We would be glad if you would give this matter your consideration as undoubtedly you are familiar with the existing local conditions, and advise us as to what policy we should really adopt and follow in a case of this kind.

The writer when meeting Mr. Cadman of the Atlas Mortar Co., was very much impressed with his perfect frankness in discussing matters and his knowledge of the general plastering situation. We believe that your Mr. Steffins is on very friendly terms with Mr. Cadman and we are wondering if he would feel inclined to discuss this matter over with Mr. Cadman and get his suggestions and point of view, advising us as to just what he would suggest as being the best policy for us to adopt. We suggest this as we are rather under the impression that Mr. Cadman had not taken any decided stand on the question of open or closed shop in San Francisco and therefore would be in a more independent position in giving his advice or suggestions.

In the meantime we shall have to write Mr. George but will do so in a non-committal manner asking for further time to give this matter our consideration which we feel a subject of this importance demands.

Awaiting with interest your future favors, we are

Yours very truly, The Best Bros. Keene's Cement Co.
(Signed) Thos. Best.

EXHIBIT 2 TO LOMAX AFFIDAVIT

The Best Brothers Keene's Cement Company, Medicine Lodge,
Kansas

May 7, 1923.

The John R. Steffens-Lomax Co., San Francisco, Calif.

Att. Mr. John H. Steffens

[fol. 470] GENTLEMEN: We are in receipt of your favor of the first in reply to ours of April 26th.

We are very glad indeed that you have written us as doing *as* the information and suggestions passed to us are very useful, and we certainly appreciate your covering the situation as full as you have done. As the writer holds a very favorable opinion as to Mr. Cadman's frankness and honesty in plastering matters, we are especially glad to have his suggestion that it would be best for us to continue selling MacGruer & Simpson direct but to discontinue selling the Golden Gate Materials Co., and we should be glad indeed to accept Mr. Cadman's suggestion. On your next visit to him we will be pleased if you will extend to him our thanks for his good consideration in passing this information to us.

We are especially glad to note that the Atlas Mortar Co. are using up their Nephi stock of Keene's Cement, after which time we trust they will use Best Bros. material exclusively and, as we shall make every effort to protect their requirements, we are looking forward to doing considerable business and pleasant connections with them.

You will please therefore be governed in the matter of the G. G. M. Co. as above and not accept from them any further orders for our material.

Just what the effect will be on the plasterers interested in the G. G. M. Co. we can hardly judge but we feel that it is best for us not to have direct dealings with the G. G. M. Co., if this should entail a small sacrifice on our part. We hope that our being unable to accept orders from them will not have any effect upon the plastering contractors who organized this company and prejudice them against the use of our material.

We presume you will see MacGruer & Simpson and discuss this matter with them advising that great pressure is being brought upon us to prevent our selling direct to them but we are going to continue furnishing them their requirements until such time as they express a desire or willingness to purchase our product through recognized general dealers, but that we have decided we cannot accept any further orders from the G. G. M. Co. We believe it would be well if you would explain this situation to MacGruer & Simpson so that they will not misunderstand our motives in any way, and we hope that the other plastering contractors interested in the G. G. M. Co. will not feel that we are taking sides either for or against them in the matter.

Just whether our continuing to sell to MacGruer & Simpson will be

acceptable to Mr. George of the Cowell Lime & Cement Co. is a question but we do feel that our declining to accept further orders from the G. G. M. Co. will meet with his approval and show that we are trying to meet his suggestions in this direction.

We hope that you are finding an increasing interest in Best Bros. [fol. 471] Keene's Cement as a plastering material in your market and that in the near future you will be able to advise us of prospective work upon which our material will be used.

Awaiting your further pleasure, we are

Yours very truly, The Best Bros. Keene's Cement Co.

(Signed) Thos. Best. TJB:N.

EXHIBIT 3 TO LOMAX'S AFFIDAVIT

The Best Brothers Keene's Cement Company, Medicine Lodge,
Kansas

May 22, 1923.

The John R. Steffens-Lomax Co., San Francisco, Calif.

GENTLEMEN: We are in receipt of your favor of May 18th enclosing confirmation of your wire of the 17th and your order Nos. 937, 938, and 939.

We have shipped today to MacGruer & Simpson their order No. 937 and expect a car any day for loading the second fifty ton shipment to apply on their order No. 938, balance of orders to be shipped as instructed later. We presume that MacGruer & Simpson or yourselves will give us sufficient notice when needing additional shipments so that we can secure large capacity cars in time to enable shipments to be made to take care of their requirements.

We have read with much interest your letter of the 18th and appreciate your having written us as fully on the various items mentioned as you have done. So that we may be fully advised and therefore able ourselves to judge of the situation in San Francisco, we may possibly raise points or ask questions that may seem a little strange to you.

In the first place, are we right in supposing that the parties who in the past have been so active in establishing the open-shop principle are now battling for the use of hard wall plaster as against lime mortar *guaged* with Keene's Cement?

We notice on order No. 939, Builders' Exchange Permit No. 37431 calls for one hundred tons. We do not understand just why this notice should have been made on your order, nor do we understand why it is necessary to obtain permits from the Builders' Exchange for release of building materials as this is something new to us. We would be glad of your further explanation as to why it seems to be the practice in San Francisco before placing orders for building [fol. 472] materials to obtain permits or consent from the Builders' Exchange to purchase building materials by members of the Exchange.

Does the Industrial Relations Committee for which Mr. Max Kuhl is the attorney work in harmony with the Builders' Exchange and has such Committee its active support to the general principle of open-shop? We notice from your report of the meeting which Mr. Steffens attended that the attorney in question stated that the so-called "Big Five" plasterers were loyally upholding the principles of the open-shop and that he could see no reason why the discrimination should continue against the G. G. B. M. Co. If you would kindly enlighten us a little further on this phase of the situation, your further information would be very interesting to us.

We further note that you feel there is now a new alignment of interests composing the Henry Cowell Lime & Cement Co. and the Pacific Portland Cement Co. We have known in a general way that the Pacific Portland Cement Co. did own and operate certain gypsum plaster plants and have also tried in the past to make Keene's Cement. In this direction we might mention that some seven or eight years ago a representative of the Pacific Portland Cement Co. visited our plant for the express purpose of trying to obtain our methods of making Keene's Cement. Fortunately we learned what the intention of this party was before giving him any information or allowing him to go into our plant so that his mission here was a useless and disappointing one to him.

We did not know, however, that the Henry Cowell Lime & Cement Co. were producers of gypsum or interested in any gypsum properties or plaster plants.

The information given that the Pacific Portland Cement Co. would sell direct to any of the large plastering contractors but will not deliver to the G. G. B. M. Co. is very interesting as this leads us to believe that our selling direct to MacGruer & Simpson as we have done in the past is therefore not an unusual practice seeing that the Pacific Portland Cement Co. are doing the same thing.

As to the Pacific Portland Cement Co. purchasing the Cafferata formula for making Keene's Cement, Cafferata & Co. are the principal Keene's Cement manufacturers in England but they were disturbed so much in their manufacturing during the war that they have not really regained their former status and it is now almost impossible to obtain any of their material even in New York or eastern cities. We can assure you, however, that the Cafferata formula would do the Pacific Portland Cement Co. no good as, from our tests we know that none of the gypsums on the Pacific Coast or even in Utah or Nevada are suitable for making Keene's Cement, so that with the best and most up-to-date methods of making Keene's Cement this cannot be done successfully in your territory as the raw materials are not suitable either in texture or composition. We can readily see that it would be to the interest of the Pacific Portland Cement Co. to keep other makes of Keene's Cements out of the California market if possible.

[fol. 473] In this direction it may interest you to know that last year we formed a close working agreement with Galbraith & Co., of Seattle who have been general distributors for the Pacific Portland

Cement Co. in the Washington territory but who gave up the distribution of their Keen's Cement to handle exclusively our make in their territory.

We are glad of the information you give with reference to the make-up of the G. G. B. M. Co., which you advise is practically owned or controlled by what is known as the "Big Five" plasterers; also the additional information to the effect that they are putting up a mortar plant with the intention, we presume, of making ready-mixed mortar by the wet process, same as the Atlas Mortar Co. are now doing. If we are right in this supposition we would like to have you advise as to what effect the entrance of this firm into the ready-mixed mortar proposition would have upon Mr. Cadman and his Atlas Mortar Co.

Relative to the prospective work which you mention, we would be glad if you would advise us as to the probable tonnage that MacGruer & Simpson will use on the Matson Navigation Building. We note that work will commence shortly on Haviland Hall at Berkeley and that in addition to these two operations MacGruer & Simpson have a hotel at Fresno and two Masonic Temples upon which you feel that Best Bros. Keen's Cement will certainly be used. In a general manner we take it that the prospects for an increased demand and extended use of Best Bros. Keen's Cement in San Francisco and territory looks favorable to you and that we will in the future get a nice line of business from such territory.

The foregoing contains some of the points upon which we would like to have your suggestions and advice and this now leads us up to the main question.

As advised you by previous correspondence, we have had several letters from Mr. W. H. George of the Henry Cowell Lime & Cement Co. commencing with his letter of April 19th raising objections to our selling direct to MacGruer & Simpson and especially to the G. G. B. M. Co., claiming that recognized building supply dealers would not be favorable to the handling of our Keen's Cement so long as we continued the practice, and asking us to discontinue making shipments to the concerns in question.

On April 26th we wrote you with reference to this question raised by Mr. George and in your reply of May 1st you stated that Mr. Cadman of the Atlas Mortar Co. thought it would be advisable for us to continue selling MacGruer & Simpson but he did not see the justice in our selling the G. G. B. M. Co. You further advised that you were not kindly disposed to the G. G. B. M. Co. and we gathered the impression that it would be advisable for us to discontinue accepting orders or making shipments to this company.

Mr. George in reply to our letter accepting his complaint wrote us on May 2nd that Mr. Cadman had just called him up protesting against the very thing that he had written us about; namely, our selling to MacGruer & Simpson and the G. G. B. M. Co. and again asking us to discontinue furnishing this firm any more material. [fol. 474] We replied to Mr. George's letter of May 2nd that we had decided to discontinue shipments to the G. G. B. M. Co. (doing

so on advice of your letter of May 1st) but that we would not refuse to accept orders or discontinue shipments to MacGruer & Simpson.

Mr. George wrote us on May 11th in reply to our last communication saying that our decision in regard to the G. G. B. M. Co. was correct and satisfactory but until we would take the same course with MacGruer & Simpson his firm and other dealers in San Francisco would not be favorable to our material, further stating that he positively knew that MacGruer & Simpson were not boosters for lime mortar gauged with Keene's Cement but are and always have been hard wall plaster advocates; that the big job they have on hand, which is for lime mortar gauged with Keene's Cement—the Matson Building, for which Bliss & Faville are the architects—was only on the insistence of the architect a lime mortar gauged with Keene's Cement job; that MacGruer & Simpson will not boost our material and will only use this when they are not allowed to use hard wall plaster.

We have not replied to this last letter of Mr. George's as yet, feeling that he has rather mis-stated matters as the writer, after his conversation with both Mr. MacGruer & Mr. Simpson last February is decidedly of the opinion that they are not favorable to hard wall plaster but are decidedly favorable to lime mortar gauged with Keene's Cement.

We have about sized up the San Francisco situation as follows:

We realize that the Henry Cowell Lime & Cement Co. are the big factor in building material supplies but, unless they can have exclusive sale of our material, they are not going to pass much business to us, in our opinion. To get their hearty co-operation and good will they ask us to discontinue business relationship with MacGruer & Simpson who, we feel, have done more for our material the past few months on the Pacific Coast than the Henry Cowell Co. will or can do for us. We therefore feel that there are two courses open for us—either to break relationship with MacGruer & Simpson and probably Mr. Cadman of the Atlas Mortar Co. and work with the Henry Cowell Co. exclusively, or leave the Henry Cowell Co. alone, accepting any business they may favor us with but not meeting their suggestions by declining to ship to certain parties whom they designate. If we adopt this course we would not change the present status of our arrangements and would be free to deal with MacGruer & Simpson, Mr. Cadman and others.

Personally the writer was much impressed with Mr. Cadman and his methods and we feel more inclined to work in friendly relationship with him and his Company than we care to do with the Henry Cowell Co.

We have decided, however, on one point and that is we will deal with MacGruer & Simpson, accept orders from them, and make direct shipments to them to any point they may wish so long as their financial standing (which is unquestionable, we presume) is satisfactory, as we realize that they are our hard and fast friends [fol. 475] and are in a position to do more good for us than the Henry Cowell Co.

With reference to the G. G. B. M. Co., if we are correct in supposing that what is known as the "Big Five" Plasterers control this company and that the other members of the firm are as responsible as MacGruer & Simpson, if you think it would be to our interest and would gain the friendship of the other plastering contractors to sell direct to their company, we will certainly do so. Although we told Mr. George that we would discontinue shipments to them, your recent letter puts a different aspect on this concern and we feel that if the Industrial Relations Committee sees no reason for discrimination against them there is no reason why we should do so.

Are we right in supposing that Mr. Cadman and his company wish to work in the best of faith with us and handle our Keene's Cement both in their prepared mortar and also through their building supply yards, which we understand they operate?

If you can advise us we would be glad to have you do so as to the attitude of some of the principal architects and general building contractors in San Francisco with reference to the open-shop or American Plan and whether there would be any danger of antagonizing architects or general building contractors by our selling direct to MacGruer & Simpson or the G. G. B. M. Co. We realize that if our methods of marketing our material in San Francisco were contrary to the opinion of architects and general contractors this might be a disadvantage that we would be placed under, therefore we should be glad if you would enlighten us on this point.

At last we are glad to be able to advise you that effective July 1st the rate on Keene's Cement from Medicine Lodge to San Francisco and points taking the same rate will be \$8.90 per ton on minimums of 60,000# instead of the present rate of \$11.20 per ton. Therefore after July 1st the rate will be reduced \$2.30 per ton.

We trust that you will pardon us for having written you at such length but, as we have great hopes for business in San Francisco in the future, we naturally wish to have all information and conditions as clearly in our minds as possible, so that we may be able to handle the business in the most intelligent manner.

With kindest regards, we are

Yours very truly, The Best Bros. Keene's Cement Co.
(Signed) Thos. Best. TJB:N.

EXHIBIT 4 TO LOMAX'S AFFIDAVIT

"The Best Brothers Keene's Cement Company, Medicine Lodge,
Kansas

June 11, 1923.

[fol. 476] The John R. Steffens-Lomax Co., San Francisco, Calif.

GENTLEMEN: We are in receipt of your favor of the 5th, enclosing correspondence with reference to the Industrial Relations Committee, which we herewith return after noting.

We are very glad indeed that you have written us so fully with regard to this industrial Relations Committee. We gather from your information that the G. G. B. M. Co. have now been admitted as members in good standing of the Builders' Exchange and that therefore there will be no question as to their being in the same position as other building supply dealers and entitled to buy their materials direct from manufacturers the same as other building supply dealers in your city. If we are right in this opinion we are very glad indeed to hear of the embargo against the G. G. B. M. Co. being removed and we shall be glad to make shipments to them, our doing so not interfering in any manner and being quite regular.

As we now understand the situation in San Francisco both the G. G. B. M. Co. and MacGruer & Simpson being members of the Builders' Exchange it is therefore quite in order for us to accept orders from and make shipments to both of these firms and our doing so cannot be considered irregular. The Henry Cowell Lime & Cement Co. have objected so seriously to our shipping to MacGruer & Simpson that our continuing to do so which we certainly propose doing—will, we believe, be the means of causing the Henry Cowell Lime & Cement Co. to lose interest in our Keene's Cement and refuse to handle the same. Our feeling is, however, that we would rather have the good friendship and business of MacGruer & Simpson than the business of the Henry Cowell Lime & Cement Co., especially so, if we are right in believing from the information you have given us previously that they are not much interested in pushing sales of Keene's Cement and are more interested in ordinary hard wall plasters.

We are especially pleased to hear of the progress of the mixing plant being erected by the G. G. B. M. Co. This plant, we presume, will be engaged in exactly the same line of trade as the Atlas Mortar Co. but will probably cater more to the trade of the Builders. Five plasterers who, we understand, control the G. G. B. M. Co. This raises the thought with us as to whether we can serve both the G. G. B. M. Co. and the Atlas Mortar Co. their requirements of Keene's Cement for use in their mixing plants without conflicting features.

On the writer's visit to San Francisco he was much impressed with the general make-up of the Atlas Mortar Co. and we certainly hope that we will be able to furnish them all of their requirements for Keene's Cement they may need in their making of their ready-mixed mortar and, as the new freight rate will be effective July 1st, we are hoping after that date to be favored with orders from them providing they have used up by that time the stocks of Keene's Cement they had on hand.

When the G. G. B. M. Co. get their mixing plant completed and [fol. 477] ready for operation we hope that we can make arrangements with them whereby they will use our Keene's Cement entirely in making their ready mixed plastering mortar. We shall of course be glad to give them the same favorable prices that we agreed to give to the Atlas Mortar Co. Of course, we would expect

the G. G. B. M. Co. to confine the use of Keene's Cement upon which we will make them the special price to the ready-mixed mortar trade solely and not sell this in its original form. When they get ready to operate their plant we will be glad to take this matter up further with you and try to complete the arrangement hoped for.

Are we correct in believing that the firm of MacGruer & Simpson are largely interested in the new mixing plant of the G. G. B. M. Co.? If so, we feel that it would be perfectly safe for us to give the company a special price on the Keene's Cement for the ready-mixed mortar trade and that our doing so would not be taken advantage of in their retail trade.

We have had no communication from the Atlas Mortar Co. and would be interested if you could advise us as to whether they still feel kindly disposed to our material and are expecting in the near future to use this in their ready-mixed mortar.

Awaiting your further pleasures, we are

Yours very truly, The Best Bros. Keen's Cement Co. (Signed)
Thos. Best. TJB:N."

EXHIBIT 5 TO LOMAX'S AFFIDAVIT

May 1st, 1923.

The Best Brothers Keene's Cement Co., Medicine Lodge, Kansas.

GENTLEMEN: At your suggestion the writer called on Mr. Cadman with reference to the letter you received from W. H. George on the subject of selling direct to MacGruer and Simpson also to the unrecognized dealers the Golden Gate Materials Co. Your letter dated April 26th.

I glean from Mr. Cadman's statements that it would be unwise to discontinue selling MacGruer and Simpson who are the best boosters here for Keene's Guage Mortar but he does not see the justice in our selling the Golden Gate Materials Co. as they are the one factor that is prolonging the struggle for the open shop.

The G. G. M. Co. was organized by the "Big Five" Plastering contractors and which includes MacGruer & Simpson, who use this means of obtaining materials when the recognized dealers will not sell them and also supply the unions. Mr. Cadman explained how he could sell the Big 5 mechanically mixed mortar much cheaper than they could [fol. 478] produce their own and thereby greatly increase their tonnage sales, but they prefer to confine their sales entirely to the 25 smaller plastering contractors who are standing firm for the open shop.

It appears to me advisable to pass up the Golden Gate Materials Co. business now, which would entail a small sacrifice, and be in line for much greater tonnage later on, especially as it is felt that the battle is about won for the open shop. This will not effect MacGruer & Simpson Sales whom we are told are reestablished in good standing mem-

bership with the Builders' Exchange. We are not kindly disposed to the G. G. M. Co. as they recently refused the courtesy of a loan of a few tons of Keene's cement and offered to sell us at \$44.00 per ton, doing the very thing we are trying to overcome, the charging of prohibitive prices.

Mr. Cadman stated he is using up his Nephi stock and in a short time orders for Best Brothers stock will come along, an order for a car will be along in a few days. I also have an appointment with him to call on an architect or two for the purpose of acquainting myself with his methods of educating the architect to the use of Keene's *guaged* mortar also to be furnished with comparative costs of applying and mixing *guaged* mortar and hard wall plaster so we may be thoroughly equipped for a campaign on the architects for increased use of our product.

We trust that this will give you an insight into conditions here to enable you to reply to Mr. W. H. George.

Yours very truly, John R. Steffens-Lomax Co. JRS/MW.

EXHIBIT 6 TO LOMAX'S AFFIDAVIT

May 18, 1923.

Mr. Thomas Best, The Best Bros. Keene's Cement Co., Medicine Lodge, Kansas.

DEAR MR. BEST: The outstanding feature of this market for your products today is a kaleidoscopic change from an effort to establish the "open shop" to a battle for trade supremacy between the proponents for hardwall and of lime-*guaged* mortar.

The "open shop"—which is designated here in the more euphonious term of American Plan—is an established fact; that statement was made yesterday by Max Kuhl, the attorney for the Industrial Relations Committee on the occasion being a hearing which was initiated by the "big-5" plasterers (MacGruer and Simpson, Francis O'Leary, Peter Bradley, A. Knowles and one other), for the particular purpose of eliminating the embargo against the Golden Gate Building Materials Co. in the matter of permits for the release of Building Materials from the Builders' Exchange.

[fol. 479] At Mr. MacGruer's request, Mr. Steffens was present at the meeting, which was also attended by several architects, a representative of U. S. Gypsum and of Pacific Portland Cement Co.; the conclusion voiced by Mr. Kuhl is this; that all of the so-called 'Big Five' are loyally upholding the principles of the Open Shop—that the Builders' Exchange does not refuse to issue permits to any of the 'Big Five' individually—and that he sees no reason why the discrimination should continue against the G. G. B. M. Co. any more than any dealer in the same line, so long as its organization is not utilized in any way to defeat the principle of the Open Shop.

As this matter now stands, there is a new alignment of interests:

Henry Cowell Lime and Cement Co. and Pacific Portland Cement Co. are both interested in the use of hardwall; you probably know, better than we, the extent of their manufacturing operations, as well as their commitments to the gypsum industry; we do not know if Cowell uses the same practice, but it is related to us that Pacific Portland will sell direct to any of the 'Big Five' but under no circumstances will it deliver to the G. G. B. M. Co., simply relying on the protection afforded by inability to secure release permit from the Exchange.

We also know that Pacific Portland is making an aggressive sales effort from the financial angle of banker's letters—Mr. MacGruer showed us a letter he had received from the Bank of Italy introducing a representative of the Pacific Portland to him; and the same source reports it has good information that efforts are being made by Pacific Portland to purchase the 'Cafferetta' formula.

The thing which is obvious is that Pacific Portland wants to keep out producers and distributors—they have no relish for lime-guaged mortars—and since their products comprise Cement, hardwall and a so-called Keene's it is easy to see how their interests are affected.

This brings us to Mr. Cadman; naturally his interest a short while back was strongly with the Builders' Exchange and W. H. George (of Henry Cowell Lime and Cement Co.), but now he recognizes that the interest of the 'Big Five' are his interests as well.

As for the Golden Gate Building Materials Co. itself, we are informed as follows: its business was organized at a time when there was less unanimity on the score of the Open Shop and it actually was organized by the Big Five for their own protection and in opposition to the American Plan; George MacGruer was one of the leaders and financial backers; then came the Plasterers' strike and all of the 'Big Five'—including MacGruer—regained good standing with the Builders' Exchange by locking out the strikers. Then the business of the G. G. B. M. was offered to the Exchange, the tender being declined with the curt assertion that the only thing to be done was to close the business; appeal was taken from this attitude and the appeal body determined that there should be no discrimination against the G. G. B. M. and some suppliers have accepted that decision as authority for selling directly to them notwithstanding that release permits are still withheld as indicated with relation to Pacific Portland Cement Co.

[fol. 480] We are also indebted to Mr. MacGruer for the assertion that Golden Gate Building Materials Co. is now putting up a Mortar Plant at 540 Eighth Street, the cost of which will be in the neighborhood of \$100,000.00, in which all of the 'Big Five' have interest; there is no doubting for a minute but that George MacGruer, himself, has done more for the return of good plastering, more for an intensive interest in Best's Keene's than would have been considered possible a year ago and he is entitled to all the support that we can give him. He has accomplished authority to substitute on several large contracts where Mr. George's Cement and Nephi Keene's had already been written in, and it is therefore not difficult to analyze this opposition.

A little speed was injected into the situation two days ago when Mr. White of the G. G. B. M. Co. telephoned in an order to us for a car of Keene's for early delivery. On taking this condition up with Mr. MacGruer, we are assured that until the determination of the policy of discrimination, all requirements may be placed directly with MacGruer and Simpson—for the benefit of all of the 'Big Five' and we therefore place before you signed orders as follows:

Our No. 937. 50 tons regular. No permit req. For immediate shipment, confirming our wire of May 17th, 1st clause.

Our No. 938. 100 tons regular. No permit req. For shipment as instructed, of which 50 tons is ordered per wire of May 17th, 2nd clause; shipment in 5 days (May 22) and balance withheld.

Our No. 939. 250 tons regular. Permit 37431. 100 T., dated May 16. For shipment as instructed for clause 3 of teleg. May 17.

Relative to prospective work upon which Best Bros. Keene's will be used, you of course know that the Matson Navigation Bldg. is now being plastered by MacGregor and Simpson, using the Keene's which was originally placed for Haviland Hall, Berkeley, work on which has been delayed, but will follow shortly. MacGruer and Simpson also have Californian Hotel at Fresno and two Masonic Temples, one at Fresno and another at Modesto in which Keene's is definitely to be used.

Of prospective work there seems to be no limit; numberless projects of magnitude are beyond the formulative stage, the list would be too lengthy for this record, and the present attitude of the 'Big Five'—most favorable toward Best's Keene's—will assure that their efforts will join ours in securing specification.

With best regards.

Yours very truly, John R. Steffens Lomax Co. WBL/MW.

[fol. 481]

EXHIBIT 7 TO LOMAX'S AFFIDAVIT

June, 5, 1923.

The Best Bros. Keene's Cement Co., Medicine Lodge, Kansas.

San Francisco situation

GENTLEMEN: We have deferred response to Mr. Best's letter of May 22nd in order to gather authoritative information on the points named by him, but the most important development to-day is the announcement that the Golden Gate Building Materials Co., with the grouped power of persuasion exercised by the Big Five Plasterers, has overcome the situation of refusal to issue material-permits which was being enforced against it. This determination of involved matter doubtless nullifies the requirement of information but we place it before you, nevertheless.

Answering your first question, What is the function of the Industrial Relations Committee? This Committee was organized some two years ago, composed of about 10,000 subscribers to a fund for that purpose, to combat a threatened tie-up of building operations at the hand of Union labor; it had the approval, without entangling alliance, of the Chamber of Commerce and the Builders Exchange, and its first principal activity was to establish an Impartial Wage arbitration board which, after hearing all sides to the issue, set a scale of wages which was not entirely to the satisfaction of the Union Labor Element; here it was that the American Plan started, requiring the employment of non-union as well as union men on any job, and in order to enforce this plan, the Builders Exchange adopted the Permit System, restricting the delivery of materials to those who subscribed to the enforcement of the American Plan.

We are enclosing several letters from the Builders Exchange—from our files—which go rather fully into the matter, all being signed by our friend, Mr. W. H. George, of Henry Cowell Lime & Cement Co. Enthusiasts of Mr. George's calibre have the failing that their enthusiasm sometimes oversteps their adherence to veracity: it is not our understanding that the Industrial Relations Committee is any part of the Builders Exchange, as he states in his letter of May 29th, and we gained our viewpoint from a direct putting of the question to the secretary at a parallel date.

This brings us to a value of Mr. George's assertion that our friends MacGruer and Simpson were not pushing Best's Keene's as against hardwall: Mr. Steffens has heard Mr. MacGruer make this offer to an architect: he will mix a yard of mortar and use 100 lbs of Best's, and mix another yard and use any other Keene's—150 lbs. of it: make test panels for the architect's selection and leave it entirely to him as to which is the best wall. I think nothing further need be said to illustrate.

The mixing plant of G. G. B. M. Co. is progressing nicely: our friends across the hall, Lindgren & Co.—probably the biggest contractors in these parts—is doing the erection, and we have seen it [fol. 482] with our pairs of eyes: and it will be a very short time before it is in operation.

We have been unable as yet to get an idea of requirements on MacGruer's jobs: his first estimate of Matson Building was a hundred tons and we also believe the same amount was scheduled for Haviland Hall at Berkeley: the Fresno and Modesto jobs are as yet not estimated, but we are confident that continued and increasing orders are to follow.

If there is anything we have left uncovered in this situation, please have no hesitancy in placing your further interest before us.

Yours very sincerely, John R. Steffens Lomax Co. WBL/MW.

EXHIBIT 8 TO LOMAX'S AFFIDAVIT

June 21st, 1923.

Mr. Thos. Best, c/o Best Bros. Keene's Cement Co., Medicine Lodge, Kansas.

DEAR MR. BEST: Your letter of the 11th, at hand, and with reference to the Golden Gate Building Materials Co., it seem that W. H. George of the Pacific Portland Cement Co. are still fighting. However, Mr. Max Kuhl of the Industrial Relations Committee stated in the presence of Mr. W. H. George and others that he absolutely would not stand for any further discrimination against the G. G. B. M. Co. and from that time the following mfrs. supply the G. G. B. M. Co. with all the materials they want. We personally viewed large stocks in warehouse from these firms and also saw letters and invoices addressed directly to the G. G. B. M. Co.

United States Gypsum Co.
Buttonlath Mfg. Co.
Great Western Gypsum Co.
Nevada Lime & Rock Co.

To make sure that we advise you correctly we called on Mr. Max Kuhl yesterday in company with Mr. Barrimore, Sales Manager for the G. G. B. M. Co. and Mr. Kuhl reiterated again that there must not be a recurrence of discrimination against these dealers. That they must receive the same treatment accorded all building supply dealers who uphold the Open Shop principal, and Mr. Kuhl stated, I know the G. G. B. M. Co. are supporting the plan.

Mr. Kuhl was surprised that the Builders Exchange refused to issue permits to the Golden Gate Co. and said "I will look into that matter immediately and see that the condition is remedied."

In view of these facts there is nothing to interfere with the acceptance of orders and delivering materials to the G. G. B. M. Co. [fol. 483] However, the G. G. B. M. Co.'s application for membership to the Builders' Exchange has not as yet been accepted, but all the five members of the firm are members individually, including MacGruer & Simpson.

We will call on W. H. George in the near future and report the interview to you at that time. Do not think it wise to call just yet.

The G. G. B. M. Co. mortar mixing plant is now ready for operation, a little delay was occasioned by improper gearing of some motors, but they are now ready to go the first of next week.

The capacity of this plant is far in excess of the entire mixed mortar requirements of this district and all the equipment is in duplicate so they are insured against forced shut downs by machinery failures. This plant will no doubt take some of the Atlas Mortar business.

We are keeping in touch with Mr. Cadman who has been in the hospital for some weeks but is now back in his office for a part of each day. He phoned a few days ago he would be ready in a short

time to go into the Keene's Cement situation as outlined to you previously. He also informed us he had ordered another car from you recently. We wish to assure you that Mr. Cadman expresses himself as being very friendly to Best Bros. Keene's Cement.

The situation is clearing up very nicely and we see no reason why we cannot look forward to a gradual increase in the volume of business for Keene's cement.

Both the Atlas and G. G. B. M. Co. agitate the question of advertising—and we are asking the Daily Pacific Builder, The Architect and Engineer and the South West Builder and Contractor to send you samples and rates of *there* Advertising space and Construction Report service, for your consideration, and we recommend that you do some advertising at this time. We are also requested by these firms to co-operate with them in obtaining Architects' specifications for Keene's Gauged Mortar jobs, and which we are giving them.

We have been feeling out the G. G. B. M. Co. about *there* future requirements and have intimated that a special price for the Ready Mixed Mortar trade only might be obtained and assurances given that it would not be used for distribution in its original form and that we supply them with all their Keene's Cement requirements. We feel that such an arrangement will be very acceptable and as the new plant is now ready see no reason why a definite price arrangement should not be made now.

MacGruer & Simpson are largely interested in this concern.

With kindest personal regards, we are,

Yours very truly, John R. Steffens-Lomax Co. JRS/S.

AFFIDAVIT OF CLINTON B. ROGERS ON BEHALF OF COMPLAINANT

Clinton B. Rogers, being first duly sworn deposes and says:

He is a citizen of the State of Ohio and a resident of Cuyahoga County, Ohio, City of Cleveland, and General Sales Manager of The [fol. 484] Sandusky Cement Company. The Sandusky Cement Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business at Bay Bridge, Ohio.

That hereto attached, and marked respectively Exhibits 1 to 12 both inclusive, save and except Exhibit 7, are telegrams, letters and reports received in due course of business from George P. Schwaab.

That hereto attached, and marked respectively Exhibits 13 to 23 both inclusive, save and except Exhibit 21, are original letters and telegrams received by The Sandusky Cement Company in due course of business from the Builders Exchange.

That hereto attached, and marked respectively Exhibits 24 to 32 both inclusive, are carbon copies of letters and telegrams sent by The Sandusky Cement Company to George P. Schwaab.

That hereto attached and marked respectively Exhibits 21 to — are copies of letters and telegrams sent to the Builders Exchange.

That hereto attached, and marked respectively Exhibits 33 to 36

both inclusive, are telegrams and letters received in due course of business by The Sandusky Cement Company from The Gray Thorning Lumber Company.

That hereto attached and marked respectively Exhibits 37 to 40 both inclusive, are carbon copies of telegrams and letters sent in due course to the Gray Thorning Lumber Company.

That all said letters, telegrams, reports and exhibits hereto attached are in the ordinary course of business kept in files of The Sandusky Cement Company, which said file is entitled "199, Gray Thorning Lumber Company, Redwood, California, 1923." That there exists in the office of The Sandusky Cement Company another file entitled "The Gray Thorning Lumber Company", said two files existing by [fol. 485] reason of the fact that the filing system of said The Sandusky Cement Company was changed on January 1, 1923.

That a few days prior to the date on which this affidavit is made, a gentleman by the name of Kage who stated that he was a member of the Department of Justice of the United States Government, called on affiant and showed to affiant copies of telegrams which he stated had been obtained by the United States Government; and asking for further information and the right to look at letters and correspondence and files pertaining to the so-called permit system of San Francisco; that at that time said Kage left with affiant an affidavit purporting to have been prepared by United States attorneys asking affiant to attach to said affidavit certain exhibits specified in said affidavit and which had prior thereto been examined by said Kage; that affiant has no knowledge whether said Kage retained in his possession any of said papers in said files or not, but affiant further says that said Kage did take some papers from said files and retained same; that attached hereto, marked respectively Exhibits 41 to 51 both inclusive, are other papers appearing in said Gray Thorning files which are copies of papers heretofore marked exhibits and hereto attached, or papers not falling within the classifications hereinbefore enumerated.

That the foregoing exhibits are all of the letters, papers, telegrams and documents appearing, or to be found, or found by affiant in said files.

That hereto attached, marked Exhibits 52 to 69, both inclusive, are letters, telegrams or reports from the Builders Exchange to The Sandusky Cement Company; George P. Schwaab to The Sandusky Cement Company; from The Sandusky Cement Company to George P. Schwaab; from G. L. Brown to The Sandusky Cement Company, which papers were in the ordinary filing system of The Sandusky Cement Company,—not in the Gray Thorning files.

[fol. 486] Affiant says that in the ordinary course of business of The Sandusky Cement Company all said papers and documents marked exhibits and hereto attached, were not and did not come to his personal attention. That as to many of them he has no personal recollection, and that said papers and exhibits are hereto attached and this affidavit made at the request of Henry A. Guiler, Special Assistant to the Attorney General, pursuant to a telegram of said

Henry A. Guiler sent to the attorneys for affiant and The Sandusky Cement Company under date of October 4, 1923.
Further affiant saith not.

EXHIBIT No. 1 TO ROGERS' AFFIDAVIT

Western Union Telegram

Night Letter

27H EB 43 Blue4 Extra.

San Francisco, Calif., Sept. 1,
via Sandusky, Ohio, 2, 1922.

Sandusky Cement Co., 626 Engineers Bldg., Cleveland, Ohio:

Ship Gray Thorning Lumber Co. Red Wood City Hundred Sixty
Plain Southern Pacific Delivery Price Seven Four Four Order Re-
ceived Over Telephone California Corporation References Bank of
Italy Red Wood City Old Mission Portland Pacific Lumber Co. Loop
Lumber Co. Coosbay Lumber Co.

George P. Schwaab. 1003 A.

EXHIBIT No. 2 TO ROGERS' AFFIDAVIT

The Sandusky Cement Company

Salesman's Report

#2 Redwood St. Firm: Gray Thorning Lumber Company.
Buyer: Z. T. Thorning, W. P. Gray. Salesman: George P. Schwaab.
Date: Aug. 30, 1922. Town: Red Wood City. State: Calif.

[fol. 487] If a Line Yard Dealer, give name and address of Home
Office. _____

Dealer (X): Dealer Medusa Exclusive. Contractor: _____
Block Mgr.: Dealer also contractor or Cons. Architect: _____

Consumer: _____

Engineer: _____

Public Official: _____ Public Commissioner: _____

Check Brands Handled

Aetna	Cape Girardeau	Diamond	Huron	Marquette
Alpha	Castalia	Edison	Ironton	Michigan
Ash Grove	Continental	Hawkeye	Kosmos	Newaygo
Atlas	Crescent	Hoosier	Lehigh	New Egyptian

N. W. States	(X) Sandusky	Wabash
Peerless	Speed	Wolverine
Peninsular	Superior	Wyandotte
Red Wing	Universal	

If a dealer, how does he rank with other dealers in town? Answer: 1st. (X). 2nd. _____. 3rd. _____.

Has dealer switch into his yard? _____. If so, what road? _____.

Does he take team track delivery? Yes. If so, what road? Southern Pacific.

Preference as to delivery, if any. _____.

Average No. of barrels handled per year? 300. Warehouse Storage capacity for how many cars? _____.

If handling Medusa with other brands, what percentage of business are we getting? _____.

If not handling Medusa what are our prospects? _____.

What brand being pushed? "Medusa." If competitive brand, Why? _____.

I quoted \$7.03 Ship's tackle San Francisco. Competitors quoting _____. Brand, _____.

Received order for _____. Has in Stock _____. BBIs.

Should be in market, _____. Demand, _____.

Is dealer well supplied with advertising material? No.

Does he use it? Yes.

What form of advertising does he prefer? _____.

Is Warehouse sign old? ____; new? ____; displayed? Yes, ____; no, ____.

Is it in good condition? Yes, ____; No, ____.

If a line yard, do they operate a silo or elevator construction department? _____.

If consumer or contractor, from whom does he buy? _____.

[fol. 488]

Remarks

They are now getting our white from the Pacific Materials Company.

They are going to get in touch with some surrounding dealers to see if they can make up a car. I am to get in touch with them the latter part of the week.

(Make Special Report on contemplated Work, Complaints and Credits.)

(See Reverse Side. Don't fail to give Complete Information.)

Re Medusa Waterproofing

Now handle _____. Brand of waterproofing.

Interested in Merusa Waterproofing: Paste, ____; powder, ____.

Why not interested? _____.

What competitive brands are being sold in dealer's territory? _____.

What is the price to dealer? ____.

Why are these preferred to Medusa? ____.

At what price is dealer retailing Medusa? ____.

Why do home builders, farmers and other consumers fail to use Medusa? ____.

What objection has the contractor to the use of Medusa? ____.

Will dealer carry small stock if we circularize architects, contractors, etc., and co-operate in selling? ____.

If not, why? ____.

Remarks: ____.

EXHIBIT NO. 3 TO ROGERS' AFFIDAVIT

The Sandusky Cement Co.

Salesmen's Report

#2 Redwood St. Firm: Gray Thorning Lumber Company.
Buyer: Z. T. Thorning, W. P. Gray. Salesman: George P. Schwaab. Date: Nov. 28, 1922. Town: Redwood City. State, Calif.

If a Line Yard Dealer, give name and address of Home Office.

Dealer (X): Dealer Medusa Exclusive. Contractor: _____. Consumer: _____.

Block M/gr.: Dealer also Contractor or Cons. Architect: _____.

Engineer: _____.

Public Official: _____.

Public Commissioner: _____.

[fol. 489]

Check brands handled

Etna	Cape Girardeau	Diamond	Huron	Marquette
Ash Grove	Castalia	Edison	Iron-ton	Michigan
Alpha	Continental	Hawkeye	Kosmos	Newaygo
Atlas	Crescent	Hoosier	Lehigh	New Egyptian
N. W. States	Sandusky	Wabash		
Peerless	Speed	Wolverine		
Peninsular	Superior	Wyandotte		
Red Wing	Universal			

If a dealer, how does he rank with other dealers in town? Answer: 1st (X). 2nd _____. 3rd _____.
Has dealer switch into his yard? _____. If so, what road? _____.

Does he take team track delivery? _____. If so, what road? _____.

Preference as to delivery, if any. _____.

Average No. of barrels handled per year? —. Warehouse storage capacity for how many cars? —.

If handling Medusa with other brands, what percentage of business are we getting? —.

If not handling Medusa what are our prospects? —.

What brand being pushed? "Medusa." If competitive brand, why? —.

I quote \$—. Competitors quoting —. Brand, —.

Received order for —. Has in stock 40 bbls. Should be in market, —. Demand, —.

Is dealer well supplied with advertising material? —.

Does he use it? —.

What form of advertising does he prefer? —.

Is Warehouse sign old? —; New —; displayed? yes, —; no, —.

Is it in good condition? Yes, —; No.

If a line yard, do they operate a silo or elevator construction department? —.

If consumer or contractor, from whom does he buy? —. Why? —.

Remarks

This concern shipped a car of "Medusa" to the unions at San Jose in violation of the Exchange rulings. They now have a car of our cement enroute and I have Mr. Gray's promise that he will not disturb any further.

This concern is not in sympathy with the Permit System and are considered "boot leggers." Please do not accept any more business from them without consulting me.

(Make Special Report on Contemplated Work, Complaints and Credit.)

(See Reverse Side. Don't fail to give complete information.) [fol. 490] Remove from quote list.

Re Medusa Waterproofing

Now handles — Brand of waterproofing.

Interested in Medusa Waterproofing: Paste, —; powder, —.

Why not interested? —.

What competitive brands are being sold in dealer's territory?

What is the price to dealer? —.

Why are these preferred to Medusa? —.

At what price is dealer retailing Medusa? —.

Why do home builders, farmers and other consumers fail to use Medusa? —.

What objection has the contractor to the use of Medusa? —.

Will dealer carry small stock if we circularize architects, contractors, etc., and co-operate in selling? —.

If not, why? —.

Remarks: —.

EXHIBIT No. 4

"Western Union Telegram

Telegram

Los Angeles, Calif., May 7, 1923.

Mr. L. C. Crawford, 180 Jessie St., c/o Builders' Exchange San Francisco, Calif.:

Gray Thorning requesting quotation San Francisco and Redwood wire advice care Hotel Trinity Los Angeles
George P. Schwaab."

EXHIBIT No. 5 TO ROGERS' AFFIDAVIT

"NOTE.—Report but one subject in this letter.

City, Los Angeles; State, California; Date, May 8, 1923; Salesman, Schwaab.

Sales Manager The San Dusky Cement Company, Cleveland, Ohio:

Subject: Gray-Thorning Lumber Co.'s Request for Quotation

Upon receipt of your day letter of today I got in touch with Mr. Gray, of the Gray Thorning Lumber Co. of Redwood City, by long [fol. 491] distance telephone, and in accordance with your instructions quoted our present prices of \$7.17 f. o. b. Redwood City and \$6.77 ship's tackle San Francisco. I informed him that as a member of the Exchange I would have to have a permit as I am working with them and also that we are behind on orders and cannot make immediate shipment. He replied: "All right, go ahead and work with them and I'll buy "Atlas." I can get all the "Atlas" I want." I told him I appreciate their inquiry and he remarked: "I know how you are fixed."

EXHIBIT No. 6 TO ROGERS' AFFIDAVIT

Western Union Telegram

"AB 743' 17 Nite.
Los Angeles, Calif., 7.

1923, May 8, a. m. 12.12.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

San Francisco exchange advice no change in Gray Thorning situation suggest you quote and request permit with order.

George P. Schwaab."

EXHIBIT No. 8 TO ROGERS' AFFIDAVIT

Western Union Telegram

"AB 378 28 Blue.
F Los Angeles Calif 9 1027 A.

1923, May 9, p. m. 3.14.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

Suggest you ignore Gray Thorning wire or advise behind on shipments and stall please refer my report April eleventh and letter April twentieth on Oakland Lime and advise.

George P. Schwaab."

EXHIBIT No. 9 TO ROGERS' AFFIDAVIT

Western Union Telegram

12 H HH 28 NL.
Los Angeles, Calif., May 10, 1923.

[fol. 492] Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

I complied with your telegraphic instructions of eighth and quoted Gray Thorning over telephone my wire of ninth was reply of yours of same date asking to advise.

George P. Schwaab." May 11, 8.33.

EXHIBIT No. 10 TO ROGERS' AFFIDAVIT

Western Union Telegram

AB48 39 NL.
F Los Angeles, Cal., 11.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

I informed Gray we would not ship without permit the Exchange will not issue any to them at present do not ship it is my understanding you desire to cooperate with Exchange if so only action we can take.

George P. Schwaab."

EXHIBIT NO. 11 TO ROGERS' AFFIDAVIT

City, Los Angeles; State, California; Date, May 15, 1923; Salesman, Schwaab.

The Sandusky Cement Company (Sales Manager, Cleveland, Ohio).

"Subject: Gray Thorning Lumber Co.

MY DEAR C. B.: In reply to your letter of the eleventh instant.

I am sorry you again assume I am not disposed to take the responsibility of handling these black-listed controversies. It is simply a point of view and I have no desire or inclination to "pass the buck."

When I received your telegram advising that the Gray, Thorning Lumber Co. wanted our prices, I immediately wire the Exchange to [fol. 493] learn if there had been any change in their status. When I learned they are still black-listed, I telegraphed you the information and suggested you quote and request permit. If I made a mistake, it occurred right here. However, this is how I look at it: They are entitled to the courtesy of a reply and consideration of their inquiry. Some day we may want their orders. Mr. Gray knows our position, as I told him we are cooperating with the Exchange when I last saw him. Under the circumstances, I felt we might just as well declare ourselves. I, therefore, made the suggestion. I figured no harm could be done if you did not approve, but there was no intention of avoiding the issue.

This case is similar in a way to the Civic Center Supply Co. When their last inquiry came up, I asked you not to ship them. I did not "pass the buck," as you term it, but the task of turning them down was squarely up to our Cleveland office. I now see I would have been better off had I taken the same stand and refrained from any suggestion. The thought in mind, however, was to treat the Gray, Thorning Lumber Co. with courtesy. I was not so considerate of the Civic Center, as they are not carload buyers of white cement under normal conditions.

There is no hesitancy on my part in being perfectly frank as to our position in this matter with the Gray, Thorning Lumber Co. When I saw Mr. Gray on November 28th last, I told him exactly where we stood. He and W. H. George are bitter enemies in this fight and he would like to slip one over on W. H.

Your telegraphic instructions of May 8th were followed to the letter. In order to keep down telegraph expenses I simply told you by wire that I had phoned them, assuming you would take it for granted that I had complied with your wishes.

[fol. 494] I am sorry there was a delay in getting your message through to me at Tobin. It finally reached me by mail at Los Angeles. I was assured when I went to Tobin that telegrams would be promptly telephoned through from Oroville. It seems the Western Union worked through Chico instead. It is poor at best, evidently, as I sent out a personal telegram which did not reach desti-

nation. However, I did not know that when I went up the canyon I tried to get in a wild country and succeeded."

EXHIBIT NO. 12 TO ROGERS' AFFIDAVIT

City, Big Bear Lake; State, California; date, May 23, 1923.

"The Sandusky Cement Company (Sales Manager Cleveland, Ohio)
(M. C. B. Rogers):

Subject: Gray, Thorning Lumber Co.

In reply to yours of the 18th instant would say that your accusation as to the matter not being handled properly by me is extremely unjust.

The question involved was would we or would we not abide by the rulings of the San Francisco Builders' Exchange. While I have no definite instructions from you on this point, I assume you are desirous of cooperating with the Exchange. When I learned you had an inquiry from this concern, I ascertained as quickly as possible whether or not they were still on the 'black list,' and forwarded you the information. With the last Civic Center Supply Co.'s order as a precedent I took it for granted you would follow the same procedure. With the knowledge that they were still ineligible for permits, it simply resolved itself down to refusing to ship providing you intended to comply with the Exchange rulings. However, from your letter of April twelfth I take it you are not whole-heartedly in [fol. 495] sympathy, and feared a 'Kick-back.' I was asked to advise and suggested asking for a permit. On this point I would like to impress the fact that W. P. Gray knows our position regarding permits. The last time I saw him we lunched together and I told him that on future orders we would have to have permits. He had a car of 'Medusa' on the way at the time without permit and agreed not to disturb. He did not keep his promise and I learned the car was disposed of in San Francisco.

This is the only 'kick-back' over the permit system I see ahead of us, and they are not a heavy tonnage account. It is doubtful if they would buy in carloads in normal times. They might use about one car per year. The two shipments we made to them were 'bootlegged,' one car being diverted to San Jose and the second to San Francisco. They simply took business from other dealers. Gray is a bluffer. I'll wager a hat he can't buy a carload of 'Atlas.' He'll take what he can get, be it 'Medusa' or 'Atlas' and not play favorites at this time.

The feeling between W. P. Gray and W. H. George is bitter. If we make another shipment to Gray, Thorning without a permit we can kiss the Henry Cowell Lime & Cement Co.'s business 'Good-bye,' and he'll probably see that our other business is affected.

This thing had to come to a head—I saw it coming months ago—but there is no good reason why I should be held responsible I have not mishandled my end. Mr. Gray knows my position exactly. He went over my head thinking he might be able to slip over another car. I see no reason why I should not assume you would act as you did when the Civic Center last offered us business, yet you may have had some object in taking a different stand. Mr. Gray knew he could not get a shipment through me so he went to you. I could not prevent that and should not be blamed."

[fol. 496] EXHIBIT No. 13 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., Mar. 1, 1923.

Sandusky Cement Co., 626 Engineers Bldg., Cleveland, Ohio.

Attention of Mr. C. B. Rogers

GENTLEMEN: This city at the present time is full of Eastern International officers of the Building Trades Department of the American Federation of Labor.

The Building Trades Council unions of this city are at this time, making very strenuous efforts to again close up the town, and it is very necessary to make a special effort to see that the Permit System is fully carried out.

Please remember that the Permit System is still in effect for the counties of San Francisco, San Mateo, and Santa Clara, to both dealers and consumers and covering the following materials:

Cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene cement, sand, rock and gravel, common brick, fire and face brock, terra cotta and all clay products.

It has recently been noted that some dealers in San Mateo and Santa Clara Counties are being shipped materials without a permit. This must be corrected.

You can very much help this Committee by notifying them of any leaks that you may notice, or that may be brought to your attention.

Yours very truly, (Signed) W. H. George. W. H. George,
Chairman Industrial Relations Committee. WHG-b."

[fol. 497] EXHIBIT NO. 14 TO ROGERS' AFFIDAVIT

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., Mar. 30, 1923.

Sandusky Cement Co., 626 Engineers Building, Cleveland, Ohio.

Attention of Mr. C. B. Rogers

GENTLEMEN: Referring to our letter of March 1st, At the request of the Oakland Builders' Exchange, and the East Bay Industrial Association, the Permit System has again been put in throughout Alameda County and Richmond, therefore will you please require San Francisco Builders' Exchange permits from all dealers in Alameda County and Richmond who desire shipments of cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keen Cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products?

Yours very truly, (Signed) W. H. George. W. H. George.
President. WHG-b."

EXHIBIT NO. 15 TO ROGERS' AFFIDAVIT

"March 30, 1923.

Mr. George P. Schwaab; Esq., Stewart Hotel, San Francisco, California.

DEAR SIR: Referring to our letter of March 1st; At the request of the Oakland Builders' Exchange, and the East Bay Industrial Association, the Permit System has again been put in throughout Alameda County and Richmond, therefore will you please require San Francisco Builders' Exchange permits from all dealers in Alameda County and Richmond who desire shipments of cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene Cement, sand, rock and gravel, common brick, fire and face brick [fol. 498] terra cotta and all clay products?

Yours very truly, (Signed) W. H. George, President."

EXHIBIT No. 16 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., Apr. 3, 1923.

Sandusky Cement Co., 626 Engineers Bldg., Cleveland, Ohio.

Attention of Mr. C. B. Rogers

GENTLEMEN: Referring to our letter of March 30th, if Alameda and Richmond dealers present to you Oakland Builders' Exchange permits, this will be just as satisfactory as San Francisco Builders' Exchange Permits.

Yours very truly, (Signed) W. H. George. W. H. George,
President. WHG-b."

EXHIBIT No. 17 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

San Francisco, Calif., April 3, 1923.

Referring to our letter of March 30th, if Alameda and Richmond dealers present to you Oakland Builders' Exchange permits, this will be just as satisfactory as San Francisco Builders' Exchange permits.

Yours very truly, (Signed) W. H. George, President."

EXHIBIT No. 18 TO ROGERS' AFFIDAVIT

Western Union Telegram

103 GS RK 10.

Pa San Francisco Calif 140 P May 7 1923.

[fol. 499] George P. Schwaab, Hotel Trinity, Los Angeles, Calif.:

No change Gray Thorning situation since your departure from San Francisco.

L. E. Crawford. 1.47 P.

EXHIBIT NO. 19 TO ROGERS' AFFIDAVIT

The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., May 18, 1923.

Sandusky Cement Co., 626 Engineers Bldg., Cleveland, Ohio.

Attention of Mr. C. B. Rogers

GENTLEMEN: As announced to you in President's Letter #5, the Permit System was found "not guilty" in our Superior Court and is in full force and effect. The purpose of this letter is to remind you that the Permit System covers cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene's Cement, sand, rock and gravel, common brick, fire and face brick terra cotta and all clay products.

Also that it is in effect for the counties of San Francisco, San Mateo, Santa Clara, Alameda and the city of Richmond.

Manufacturers must require San Francisco Builders' Exchange permits from all dealers to whom they ship in the above mentioned territories, except that permits issued to dealers for Alameda County and the City of Richmond by the Oakland Builders' Exchange will be satisfactory.

All dealers receiving goods under these dealer permits mentioned above must have on file in their office a permit before they make any deliveries to any consumer or other dealer.

Auditor's checking will be intensified at once, and it will be necessary to prefer charges against anybody not strictly complying with the above instructions.

We earnestly plead with you to cooperate with this Committee so that the Permit System may become absolutely effective for the carrying out of the American Plan in the building industry, and it is sincerely hoped that it will not be necessary to prefer charges against any one for dereliction of duty.

"Keep 'fine' money in your pocket."

Yours very truly, (Signed) W. H. George. W. H. George.
Chairman Industrial Relations Committee. WHG.—b"

[fol. 500] EXHIBIT NO. 20 TO ROGERS' AFFIDAVIT

The Builders' Exchange, 180 Jessie Street

President's Letter #7

San Francisco, May 24th, 1923.

It would seem as though there should be more cooperation between members of The Builders' Exchange belonging to one Craft and

bidding on work done by another Craft. It frequently happens that for various reasons Craft members bid on the work generally done by other Crafts.

As an example, sometimes the concrete man bids on general contracts, and likewise sometimes the General Contractor bids on a concrete job. This is merely mentioned as an example and it seems no more than right that the member of one Craft bidding on the work generally done by the other Crafts should comply with the rules and regulations of the Craft who generally does the work.

For the good of the entire organization the Central Council of The Builders' Exchange, the legislative body of the Exchange, yesterday at the regular meeting, a quorum being present, adopted the following resolution:

"Members of The Builders' Exchange, in competing or contracting for any work, shall comply with the by-laws and rules of the craft council or councils involved after said by-laws and rules have been approved by the Exchange."

This now becomes a rule of The Builders' Exchange and it is hoped that the members will strictly comply with this rule for the good of all concerned.

Yours very truly, W. H. George, President.

If you do not think co-operation is necessary watch what happens to a wagon if one wheel comes off."

EXHIBIT NO. 22 TO ROGERS' AFFIDAVIT

"The Builders' Exchange 180-188 Jessie Street

San Francisco, Cal., July 17, 1923.

The Sandusky Cement Co., 1002 Engineers Building, Cleveland, Ohio.

Attention of Mr. C. B. Rogers, Sales Manager

DEAR MR. ROGERS: I have for acknowledgement your letter of July 11th by the way written on my birthday, and appreciate very much your cooperation. Perhaps a little explanation is necessary. Atlas cement handled by the dealers here is bought by them outright and is only delivered to consumers who call at the Permit Department securing a permit and presenting it to the dealer, so it comes under [fol. 501] our Permit System as you can see.

Now as to your product. There is, and never was any necessity for your representative being in this city to secure necessary permits from the various dealers. The dealers themselves should get the

permits and attach them to the orders given your representative just the same as they do with grey cement. For instance my salesman never get a permit for our dealer customers. The dealer customer himself goes and gets the permit and attaches it to the order when he gives it to our salesman.

I think you will find that this will work out to your satisfaction. It does with the rest of us. If it doesn't please let me know again and I will try and solve the problem if there is one. On the other hand it is not possible to send out a list. In the first place a list as you describe would probably be called a black list as you very fairly named it, and would get us all in trouble, and in the second place in these troublesome times the situation changes so quickly that a list would hardly cover the necessity.

Believe me we thank you for your cooperation and wish to cooperate with you, and if these suggestions do not work out to your entire satisfaction, please let me know again.

Yours very truly, (Signed) W. H. George, President.
WHG—b."

EXHIBIT No. 23 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

President's Letter #12

San Francisco, Calif., August 27, 1923.

To all members of the Builders' Exchange, Greetings:

I am glad to advise you that the Pile Drivers, Wharf Builders, and Carpenters Union #34, which has been on strike for five weeks, has through the efforts of your organization returned to work at the old terms and conditions.

The Builders' Exchange is to be complimented on the good work done by its Building Committee. The lot at Fifth and Minna has been selected at a cost of \$110,000.00. There is a long term mortgage on the property for \$57,500.00 and the balance which we have to pay is more than on hand in our treasury. The Annual income from this property is \$8,400.00 and already we have been offered a profit on the deal.

Please remember that the Permit System is in full force and effect for the Counties of San Francisco, San Mateo, and Santa Clara. It is noted that some of the manufacturers have been making ship- [fol. 502] ments to dealers in these territories occasionally forgetting to get the permits. Manufacturers will please be extremely careful on this question.

Members employing carpenters are reminded that the standard wage scale of \$8.00 a day except to foremen.

I hope all members of the Exchange are now printing on their stationery "Members The Builders' Exchange of San Francisco."

Don't forget Builders' Day at Capitola, September 1, 2, and 3.

Remember that the foreman on the job represents the management, and if best results are to be obtained for the management, he should not be a member of a Labor Union.

Your President is anxious that each member of the Builders' Exchange should get out of the Craft organizations all the benefit that he is entitled to. The Constitution and By-Laws of The Builders' Exchange provide that each member must belong to a proper Craft Council, and the Craft Councils that are functioning properly are getting benefits each day.

This matter of maintaining and the proper functioning of the Craft Councils is of inestimable value to the sub-contractor in his dealings with architects, owners, and general contractors.

Lately your President took up with the Board of Directors of the General Contractors Association the proposition of

Allowing the sub-contractors to do the specialty work.

Confining the letting of sub-contracts to members of The Builders' Exchange.

It is hoped that a program can be worked out which will find plenty of work for the sub-contractors so that they will not need to go into general contracting.

These problems can only be worked out by proper committee work, and proper working rules for the General Contractor and Sub-contractor Crafts. I am glad to say that under recent date I am in receipt of a letter from the General Contractors Association, signed by Mr. Biller as President of the Board of Directors, which letter indicates that the Board of Directors of the General Contractors Association is always ready to sit as a Committee to open up friendly conferences with committees from sub-contractor Crafts along these lines.

It is hoped that each Craft Council through its own Secretary, and with the assistance of our Craft Secretary, will form committees at once for the purpose of taking up these conferences with the General Contractors.

Please remember that if these two problems can be worked out by reciprocal agreements between the Craft Councils it will make our Exchange a really strong, beneficial Exchange. Now let's each do his part.

I am addressing a letter to all the architects calling their attention [fol. 503] to the good men in the Builders' Exchange, and asking them when taking bids to confine themselves to our members.

I hope every member of the Exchange will constitute himself a committee of one to look up desirable members in his line of business and get them into the Builders' Exchange. Let's make the Builders' Exchange entirely representative of the whole building industry in San Francisco.

Yours for a better and bigger Builders' Exchange, W. H. George, President."

EXHIBIT NO. 21 TO ROGER'S AFFIDAVIT

"July 11, 1923.

Mr. W. H. George, Chairman Industrial Relations Committee, the
Builders' Exchange, 180-188 Jessie Street, San Francisco, Calif.

Re Permit System

MY DEAR MR. GEORGE: Due to the irregularity of our representative being in your city to secure necessary permits from various dealers entitled to purchase cement under your system, the writer would respectfully ask if it would be possible for you to mail us monthly, to this office, a list of dealers that are in good standing in your organization in order that there be no delay in getting their shipments to them promptly.

You realize, of course, that the Sandusky Cement Company markets its products direct to the various dealers in the State of California. Our competitor's product is handled through a jobber or on a jobbing basis in San Francisco. It is, therefore, unnecessary for that manufacturer direct to secure permits. This difference in the method of marketing places us in a somewhat handicapped position.

The writer feels that if you will kindly instruct your office to mail us, each month, a list of the dealers in good standing and immediately upon any dealer being placed on the black list, you so advise us, thus alleviating any possibility of our not working in harmony with your organization.

It is our aim and desire to work closely with you. On the other hand, you can see our position. Anything you can do to assist us will be gladly reciprocated.

Our Mr. George P. Schwaab has been transferred to other duties in our company and Mr. George L. Brown is leaving for the coast within the next few days, with instructions to interview you upon his arrival. In the meantime, we would certainly appreciate your issuing instructions in accordance with above request if consistent.

Yours very truly, The Sandusky Cement Company. —
—, Sales Manager. CBR:S. CC:Brown."

[fol. 504]

EXHIBIT NO. 24 TO ROGER'S AFFIDAVIT

Postal Telegram

"Cleveland, Ohio, May 3, 1923.

George P. Schwaab, Cedar Glen Resort, Tobin, Plumas County,
California:

Gray Thorning requesting quotation on carload at San Francisco
and Redwood Wire advice.

Sandusky Cement Co."

Chge. S. C. Co.
White Sales.
CBK:J.

EXHIBIT NO. 25 TO ROGER'S AFFIDAVIT

May 7th, 1923.

Mr. Geo. P. Schwaab, Salesman.

DEAR SIR: Under date of May 3rd we wired you at the Cedar Glen Resort, Tobin, Plumas County, California, stating that Gray Thorning Lumber Company of Redwood City, Calif., requested quotation on a minimum carload of 175 barrels Medusa White Cement for wharf delivery at San Francisco, also f. o. b. Redwood City, Calif., which message the Postal people under date of May 4th, advised they were unable to deliver owing to the fact that they nor the Western Union people have an office at Tobin.

We therefore tried the Western Union on May 4th, with similar results, but after considerable effort we were finally advised that they would relay this message via Quincy and Meadow Valley.

However, as we have had no reply to this message from you, up to the present time, we again wired you at the Hotel Trinity, Los Angeles, Calif., as per your telegraphic address received today.

We are still without any advice from you, and hope that you have since received one of the messages sent, and that you will advise us regarding the handling of this particular inquiry.

Our records would indicate that we are not to quote or accept any orders from these people without first taking the matter up with you. If, however, you are in their vicinity, it might be well for you to advise them direct as to what they may expect.

Awaiting your early advice, we beg to remain,

Yours very truly, ———, Eastern Sales Agent. CBK.
MH."

EXHIBIT NO. 26 TO ROGERS' AFFIDAVIT

Postal Telegram

"Time: 9:20 a. m. May 8th, 1923.

[fol. 505] Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

This office will not request permit Suggest you phone Gray Thorning price requesting the accompany order if placed with permit Do not promise immediate shipment.

Sandusky Cement Co."

Chg. to S. C. Co.
White sales.

EXHIBIT No. 27 TO ROGERS' AFFIDAVIT

Postal Telegram

"Time: 9:20 a. m. May 9th, 1923.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

Gray Thorning request wire acceptance and shipment per your quotation Advise.

Sandusky Cement Co."

Chg. to S. C. Co.
White sales.

EXHIBIT No. 28 TO ROGERS' AFFIDAVIT

Postal Telegram

Time: 9:15 a. m. May 10th, 1923.

"Mr. G. P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

Did you or did you not quote Gray Thorning If so why your wire
ninth They claim you quoted them Oakland lime order received
today.

Sandusky Cement Co."

Chg. to S. C. Co.
White sales.

EXHIBIT No. 29 TO ROGERS' AFFIDAVIT

"May 10th, 1923.

Mr. Geo. P. Schwaab, Salesman.

DEAR SIR: Enclosed find confirmation of telegram sent you today, regarding Gray Thorning Company, also the Oakland Lime & Cement Company, from whom we received an order today calling for Medusa Cement, and which we will endeavor to ship at the earliest possible date.

Due to present conditions at our York Mill we have not shipped you any cement on consignment, and had in mind that you would turn over the car covered by our Sale 3459 to these people, as stated in our letter of April 18th.

[fol. 506] When conditions again become more normal we will be pleased to consider the shipping of consignment cars to you at San Francisco.

Awaiting your further advice regarding Gray Thorning Lumber Co., we are,

Very truly yours, Eastern Sales Agent. CBK:H.

P. S.—Presume they want the plain white."

EXHIBIT No. 30 TO ROGERS' AFFIDAVIT

"Gray Thorning Lumber Company

May 11, 1923.

Mr. George P. Schwaab, Sales Representative.

MY DEAR GEORGE: First of all, please be advised that we understand that the Gray Thorning Company are classed by the San Francisco Builders' Exchange as "bootleggers"; therefore, instructions have been issued in this office, not to quote them, ship them or have anything to do with them without specific instructions from you.

Now, I am going to give you (just for your own information) a little résumé of telegrams and correspondence we have had in connection with this last request, and ask you if you can't arrive at some system that will prevent a recurrence.

May 3rd, we received the following:

Sandusky Cement Co., Cleveland, Ohio:

Quote minimum car hundred seventy five barrels Medusa white cement f. o. b. wharf San Francisco Also f. o. b. Redwood City California State time of delivery.

Gray Thorning Lumber Co."

Now, we realized that you were off the road so far as selling was concerned. On the other hand, we felt that this was of importance enough to endeavor to pass the information on to you. We therefore wired you as follows:

"Geo. P. Schwaab, Cedar Glen Resort, Tobin, Plumas County, California:

Gray Thorning requesting quotation on carload at San Francisco and Redwood Wire advice.

It took considerable delay and expense to get this wire thru. We really don't know yet whether you ever received this wire. However, on the morning of May 4th, we did receive the following:

[fol. 507] "Sandusky Cement Company:

Am enclosing the copy of our last service from Chico California. I kept the wires hot and am sure that the message will be delivered.'

Western Union.

Under date of May 7th, we wrote you as per the enclosed copy of letter. Please read the last paragraph particularly. On the morning of May 8th we received from you the following:

"Sandusky Cement Co., Engineers Bldg., Cleveland, Ohio:

"San Francisco Exchange advise no change in Gray Thorning situation. Suggest you quote and request permit with order.

George P. Schwaab.'

Now, George, here is where you made your mistake. If there is no change in the standing of this company in behalf of the San Francisco Exchange, why did you not say to us, "Do not quote or ship," instead of, as you did—"passing the buck" on to us to quote?

It is awfully hard, George, to have you conceive, that we are dependent upon you for advice concerning these questions. It has not been customary, nor will we begin now to ask for permits from this office. So, to put the responsibility back upon you (where it belongs) we wired you as follows, May 8th:

'George Schwab, Trinity Hotel, Los Angeles, Calif.:

This office will not request permit. Suggest you phone Gray Thorning price requesting they accompany order if placed with permit. Do not promise immediate shipment.

Sandusky Cement Company.'

This was done with the hopes that you would immediately take the matter up with them by wire or phone and make it very plain to them that in order to receive even a quotation from this office, or rather—acceptance of an order—they must forward a permit. Under date of May 8th, we received the following:

'Sandusky Cement Co., Cleveland, Ohio:

'Schwaab quotes six seventy seven cement f. o. b. Docks San Francisco. Ship one hundred seventy five barrels quickly. Wire acceptance.

(Signed) Gray, Thorning Lumber Co.'

Receiving no answer to our wire of the 8th to you, we wired you as follows on May 9th, in the morning:

'George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

'Gray Thorning request wire acceptance and shipment per your quotation. Advise.

Sandusky Cement Company.'

[fol. 508] To which we received the following reply:

'Sandusky Cement Co., Engineers Bldg., Cleveland:

Suggest you ignore Gray Thornings wire or advise behind on shipments and stall please refer my report April eleventh and letter April twentieth on Oakland lime and advise.

(Signed) Geo. P. Schwaab.'

George, why did you not have this matter settled once and for all, yourself, and not let this office in any way get implicated in this discussion? Our wire to you of May 8th distinctly states this office will not request permit: also suggests to you to get the information to them that they accompany order, if placed, with permit. This por-

tion of our wire you have ignored entirely. You have come back to us with the statement as contained in your wire of May 10th that you complied with our telegraphic instructions of the 8th and quoted Gray Thorning over telephone.

Now, kindly read our telegram of the 8th and your reply of the 9th and advise the writer whether or not in your mind you have complied with our instructions.

Now, George, once and for all I want you to realize that you have charge of that territory and we are dependent upon you for all information covering conditions of this kind, and we certainly want you to stop this "buck passing" on conditions that are not exactly to your liking.

You cannot expect to 'pick up all the roses' and put the 'thorns' on this office. You must handle these things as they come up. Now, give me a full report and greatly oblige.

Yours very truly, — — —."

EXHIBIT NO. 31 TO ROGERS' AFFIDAVIT

Postal Telegram

Time: 9:10 a. m. May 11, 1923.

Mr. George P. Schwaab, Trinity Hotel, Los Angeles, Calif.:

In addition to quoting Gray Thornings did you request them to forward permit with order stop Shall we ship them yes or no?

C. B. Rogers.

Chg. to S. C. Co.
Sales Dept.

EXHIBIT NO. 32 TO ROGERS' AFFIDAVIT

May 18, 1923.

"Mr. George P. Schwaab, Sales Representative

DEAR SIR: We are attaching hereto a copy of letter we have this [fol. 509] day received from Gray Thorning Lumber Co., Redwood City, Calif.

This will show you the result of not handling this thing properly and directly.

Yours very truly, — — —, Sales Manager. CBR:S."

EXHIBIT No. 33 TO ROGERS' AFFIDAVIT

"Gray Thorning Lumber Co.

Redwood City, Calif., Oct. 27th, 1922.

Sandusky Cement Co., Engineers Bldg., Cleveland, Ohio.

GENTLEMEN: Please enter our order for 175 barrels Medusa White Cement and consign this to our address, San Francisco, Calif., and ship by the same line as formerly.

The reason why we are asking you to consign this direct to us, San Francisco, is because the shipment which arrived in San Francisco some two weeks ago lay on the wharf ten days before we could get a car from San Francisco to Redwood City and at that the Pacific Mail Steamship Company shipped 154 sacks of this cement by mistake to Seattle which will not be back to San Francisco before two weeks.

The car shortage being very acute, we will arrange to take delivery at the docks at San Francisco and do our own hauling.

Kindly acknowledge receipt of order, and oblige,

Yours very truly, (Signed) Gray Thorning Lumber Co., per
W. P. Gray. WPG/B."

EXHIBIT No. 34 TO ROGERS' AFFIDAVIT

Western Union Telegram

158 H HH 21.

Redwood City, Calif., 11.33 a. —. May 31, 23.

Sandusky Cement Co., Cleveland, Ohio:

Quote minimum car hundred seventy five barrels Medusa white cement f. o. b. wharf San Francisco also f. o. b. Redwood City California State time of delivery.

Gray Thorning Lumber Co. 3.05 p.

[fol. 510] EXHIBIT No. 35 TO ROGERS' AFFIDAVIT

Western Union Telegram

"AB584 18.

Redwood City, Calif. 8 508 P.

Sandusky Cement Co., Cleveland, Ohio:

Schwaab quotes six seventy seven cement f. o. b. docks San Francisco Ship one hundred seventy five barrels quickly Wire acceptance.

Gray Thorning Lumber Co."

EXHIBIT No. 36 TO ROGERS' AFFIDAVIT

"Gray Thorning Lumber Co.

Redwood, Calif., May 12, 1923.

Sandusky Cement Co., Cleveland, Ohio:

GENTLEMEN: We are just in receipt of your telegram advising us that our order permit has not been received consequently you can not ship our order.

We do not know just exactly what you mean by a permit, but if such means that we have to make an affidavit pertaining to our race, citizenship and ability to pay our bills before we can do business with you you might as well consider business relations closed.

We have sold directly (and more so indirectly) considerable quantity of Medusa Cement and have felt a pride in so doing by virtue of the fact that the writer is an eastern man, being born and raised in West Virginia, not far from your city, consequently we felt somewhat at home in pushing your product.

However, we will have to look to some other white cement, which, no doubt we can find in short order.

Yours very truly, (Signed) Gray Thorning Lumber Co.,
per W. P. Gray. WPG/B."

EXHIBIT No. 37 TO ROGERS' AFFIDAVIT

"The Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio

Aug. 30, 1922.

Gray-Thorning Lumber Co., #2 Redwood Street, Redwood City,
Calif.

F. O. B. Redwood City, Calif.

[fol. 511] We are pleased to quote you on Medusa Products delivered F. O. B. cars station named above for immediate acceptance as follows:

	Cloth	Paper	Per barrel carloads or mixed cars of
"Medusa" White Cement..	7.44	.....	Waterproofed.
"Medusa" White Cement			
"Waterproofed"	7.94	.....	White Cement and plain White Cement.

The above Cement prices are per Standard barrel including (4) sacks.

Price.—This price is based upon the present freight rate and the cost of packages to us, and is subject to any advance or reduction as the freight rate or the cost of packages may be advanced or reduced.

Shipments to be made within fifteen (15) days from date of order.

Quantity not to exceed one car unless otherwise agreed to.

Medusa Waterproofing Powder or Paste

Medusa Waterproofing Contains 20% of Water-Repellent

Less than One Ton.....	—c. Per lb.
One Ton to 2½ Tons.....	—c. Per lb.
Over 2½ Tons or Less than Carload.....	—c. Per lb.
Carloads	—c. Per lb.

Packages

Medusa Paste.—In 1 gallon (8 lbs.) or 5 gallons (40 Lbs.) tinned steel cans with friction cover. Packed in crates of 6 one gal. or 2 five gal. cans each.

Medusa Powder.—In Non-returnable paper lined cotton sacks of forty lbs. each.

These quotations are subject to change without notice and is not binding until orders have been accepted by this Company in writing.

Terms.—On approved credit; Medusa Waterproofing 2% discount for cash in ten days. Medusa Cement net thirty days or ten cents (10¢) per barrel discount for payments in full including sacks, within ten days from date of invoice.

This quotation is subject to terms, conditions and limitations on both sides hereof.

Yours very truly, The Sandusky Cement Co. C. B. Rogers,
Sales Mgr."

EXHIBIT No. 38 TO ROGERS' AFFIDAVIT

The Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio

[fol. 512]

Oct. 2, 1922.

Gray-Thorning Lumber Co., #2 Redwood St., Redwood City, Calif.:

We are pleased to quote you on Medusa Products delivered F. O. B. cars station named above for immediate acceptance as follows:

	Cloth	Paper	Per barrel carloads or mixed cars of
"Medusa" White Cement..	7.37	.....	Waterproofed.
"Medusa" White Cement "Waterproofed"	7.87	.....	White Cement and plain White Cement.

The above Cement prices are per Standard barrel including (4) sacks.

Price.—This price is based upon the present freight rate and the cost of packages to us, and is subject to any advance or reduction as the freight rate or the cost of packages may be advanced or reduced.

Shipments to be made within fifteen (15) days from date of order. Quantity not to exceed one car unless otherwise agreed to.

Medusa Waterproofing Powder or Paste

Medusa Waterproofing Contains 20% of Water-Repellent

Less than One Ton.....	—c. Per lb.
One Ton to 2½ Tons.....	—c. Per lb.
Over 2½ Tons or Less than Carload.....	—c. Per lb.
Carloads	—c. Per lb.

Packages

Medusa Paste.—In 1 gallon (8 Lbs.) or 5 gallons (40 lbs.) tinned steel cans with friction cover. Packed in crates of 6 one gal. or 2 five gal. cans each.

Medusa Powder.—In Non-returnable paper lined cotton sacks of forty lbs. each.

These quotations are subject to change without notice and is not binding until orders have been accepted by this Company in writing.

Terms.—On approved credit: Medusa Waterproofing 2% discount for cash in ten days. Medusa Cement net thirty days or ten cents (10¢) per barrel discount for payments in full including sacks, within ten days from date of invoice.

This quotation is subject to terms, conditions and limitations on both sides hereof.

Yours very truly, The Sandusky Cement Co. C. B. Rogers,
Sales Mgr."

[fol. 513]

EXHIBIT No. 39 TO ROGERS' AFFIDIVIT.

"cc Schwaal

Jan. 5, 1923.

Gray Thorning Lumber Co., Redwood City, Calif.

GENTLEMEN: We sent you a statement on December 18th, covering shipment made to you on Nov. 8th amounting to \$971.95, which statement was subsequently returned to us on account of incorrect address. We are, however, attaching herewith copy of statement for your convenience, which we trust will enable you to pass this item for payment, as same is now past due according to our terms of sale.

Yours very truly, The Sandusky Cement Company, ————,
Credit Manager. EBO: H."

EXHIBIT No. 40 ROGERS' AFFIDAVIT

Postal Telegram

Time: 10:35 A. M. May 12, 1923.

"Gray Thorning Lumber Co., Redwood City, Calif.:

Your order permit covering not received all orders booked subject to delay price subject to change without notice account ocean rates increasing.

Sandusky Cement Co."

Chg. to S. C. Co.
White sales.

EXHIBIT 41 TO ROGERS' AFFIDAVIT

(Telegram)

"192 H HH SVC.
CR Cleveland O.

See your service your date Schwaab we forwarded to Quincy Calif.
They will deliver OK as Meadow Valley transferred at that point.
Service Chico Calif. May 4.

410 p. m.

EXHIBIT No. 42 TO ROGERS' AFFIDAVIT

The Sandusky Cement Company

Salesman's Report

Firm: Gray Thorning Lbr. Co. Buyer: Mr. Gray. Salesman
G. L. Brown. Date: 9-11-23. Town: Redwood City; State: Cal.

If a Line Yard Dealer, give name and address of Home Office.

Dealer (X): Dealer Medusa Exclusive. Contractor: — — —
Block M/gr.: Dealer also Contractor or Cons. Architect: — — —

Consumer: — — —. Public Official: — — —.

Engineer: — — —. Public Commissioner: — — —.

[fol. 514]

Check brands handled

Aetna	Cape Girardeau	Diamond	Huron	Marquette
Alpha	Castalia	Edison	Ironton	Michigan
Ash Grove	Continental	Hawkeye	Kosmos	Newaygo
Atlas	Crescent	Hoosier	Lehigh	New Egyptian
N. W. States	Red Wing	Universal		
Peerless	Sandusky	Wabash		
Peninsular	Speed	Wolverine		
Petoskey	Superior	Wyandotte		

If a dealer, how does he rank with other dealers in town? Answer: 1st. —; 2nd. —; 3rd. —.

Has dealer switch into his yard? —. If so, what road? —.

Does he take team track delivery? —. If so, what road? —.

Preference as to delivery, if any. —.

Average No. of barrels handled per year? —. Warehouse storage capacity for how many cars? —.

If handling Medusa with other brands, what percentage of business are we getting? —.

If not handling Medusa what are our prospects? —.

What brand being pushed? —. If competitive brand, why? —.

I quoted \$—. Competitors quoting —. Brand, —.

Received order for —. Has in Stock — bbls. Should be in market —. Demand —.

Is dealer well supplied with advertising material? —.

Does he use it? —.

What form of advertising does he prefer? —.

Is Warehouse sign old? —, new? —; displayed? Yes, —; No, —. Is it in good condition? Yes, —; no, —.

If a line yard do they operate a silo or elevator construction department? —.

If consumer or contractor, from whom does he buy? — —. Why? —.

Is customer returning empty Medusa Sacks promptly? —.

Remarks

Had pleasant interview with Mr. Gray. They have both Medusa and Atlas in stock, securing same from the San Francisco market, although he would not mention the names of the dealers. He emphatically stated that he would not observe the "American Plan" as he will not permit an organization to dictate to him just who he shall and shall not sell his materials. There is no doubt but what he would order a car white cement if we would ship without permit.

[fol. 515] Make Special Report on Contemplated Work, Complaints and Credits.

EXHIBIT NO. 43 TO ROGERS' AFFIDAVIT

"Redwood City, Calif., May 8th, 1923.

Sandusky Cement Co., Cleveland, Ohio:

Schwaab quotes six seventy seven cement F. O. B. docks San Francisco ship one hundred seventy five barrels quickly wire acceptance.

Gray Thorning Lumber Company."

EXHIBIT No. 44 TO ROGERS' AFFIDAVIT

Postal Telegram

Time: 9:45 a. m. May 7th, 1923.

"Mr. George P. Schwaab, Hotel Trinity, Los Angeles, California:

Gray Thorning requesting quotation carloads Frisco and Redwood wire advice.

Sandusky Cement Co

Chg. to S. C. C.
White sales.

EXHIBIT No. 45 TO ROGERS' AFFIDAVIT

Western Union Telegram

Time: 10:30 a. m. Cleveland, O., May 4, 1923.

Geo. P. Schwaab, c/o Cedar Glen Resort, Tobin (Plumas County), California:

Gray Thorning requesting quotation on carload at San Francisco and Redwood wire advice.

The Sandusky Cement Company.

Chg. S. C. Co.
White sales.

EXHIBIT No. 46 TO ROGERS' AFFIDAVIT

(Confirmation)

16 F Ed 16 Collect 3 Extra 43 cts.
Cr Cleveland Ohio via Chico Calif May 4 1923.

Geo. P. Schwaab, care Cedar Glen Resort, Tobin, Plumas County, Calif.:

Gray Thorning requesting quotation on carload of San Francisco and Redwood wire advise.

The Sandusky Cement Company. 2:25 p.

[fol. 516] EXHIBIT No. 47 TO ROGERS' AFFIDAVIT

Postal Telegram

"Cleveland, Ohio, May 3, 1923.

Geo. P. Schwaab, Cedar Glen Resort, Tobin, Plumas County, California:

Gray Thorning requesting quotation on carload at San Francisco and Redwood wire advice.

Sandusky Cement Co. CBK:J."

Chge. S. C. Co.
White sales.

EXHIBIT No. 48 TO ROGERS' AFFIDAVIT

Postal Telegraph Co.

"Office at Cleveland, May 4, 1923.

Sandusky Cement, 1002 Engrs.:

Your telegram of May 3 addressed to Geo. P. Schwaab, Cedar Glen Resort, Tobin Plumas Co., California, has not been delivered for the reason that have no office neither has Western Union.

Postal Telegraph Cable Company, (Signed) per J. Rasl."

EXHIBIT No. 49 TO ROGERS' AFFIDAVIT

Western Union Telegram

"206H HH Cleveland O.

Mr. Kayser, care Sandusky Cement Co.:

Am enclosing the copy of our last service from Chico California I kept the wires hot and am sure the message will be delivered.

Helene Morgan, Opr. Chamber Commerce Office."

EXHIBIT No. 50 TO ROGERS' AFFIDAVIT

Western Union Telegram

"Los Angeles, May 11, '23.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

[fol. 517] I informed Gray we would not ship without permit. The Exchange will not issue any to them at present. Do not ship. It is my understanding you desire to cooperate with Exchange. If so, only action we can take.

George P. Schwaab."

EXHIBIT No. 51 TO ROGERS' AFFIDAVIT

Western Union Telegram

"Los Angeles, May 10, 1923.

Sandusky Cement Co., 1002 Engineers Bldg., Cleveland, Ohio:

I complied with your telegraphic instructions of eighth and quoted Gray Thorning over telephone. My wire of ninth was reply to yours of same date asking to advise.

George P. Schwaab."

EXHIBIT No. 52 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., April 9th, 1922.

GENTLEMEN: Effective Monday morning April 10th at 7:00 A. M. and until further notice, no building materials, including cement, lime, mortar, brick, terra cotta, tile and sand will be delivered to any person, or hauled to any job in the city and county of San Francisco, for bricklaying purposes without a builders' Exchange permit.

Thanking you in advance for strict compliance with this request remain,

Yours very sincerely, Builders' Exchange of San Francisco.
 — — —, President. WHG-c."

EXHIBIT No. 53 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

San Francisco, Calif., April 12th, 1922.

[fol. 518] At a regularly called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, the following resolution was made, seconded and carried:

'At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the wage award is properly enforced in all crafts in the city and county of San Francisco for the balance of the year 1922.'

The Industrial Relations Committee of the Builders' Exchange begs to advise you that in order to carry out fully the terms of the Resolution it will immediately be necessary to install the permit system so far as cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products, also sand rock and gravel are concerned.

Therefore, the permit system will operate for the above materials effective 8:00 A. M. Thursday April 13th, 1922. Will you kindly be governed accordingly.

If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to all other materials used in the building trades.

Your whole-hearted cooperation is necessary, will be appreciated, and will soon end the present controversy.

Yours very truly, Builders' Exchange of San Francisco, by
Committee on Industrial Relations. (Signed) W. H.
George, Chairman. WHG-c."

EXHIBIT No. 54 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., April 12th, 1923.

Sandusky Portland Cement Co., Sandusky, Ohio.

GENTLEMEN: At a regularly called meeting of the Central Council of the Builders' Exchange held this 12th day of April 1922, a quorum being present, the following resolution was made, seconded and carried:

[fol. 519] 'At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the city and county of San Francisco for the balance of the year 1922.'

The Industrial Relations Committee of the Builders' Exchange begs to advise you that in order to carry out fully the terms of the Resolution it will immediately be necessary to install the permit system so far as cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products, also sand rock and gravel are concerned.

Therefore, the permit system will operate for the above materials effective 8:00 A. M. Thursday, April 13th, 1922. Will you kindly be governed accordingly.

If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to all other materials used in the building trades.

Your whole-hearted cooperation is necessary, will be appreciated, and will soon end the present controversy.

Yours very truly, Building Exchange of San Francisco, by
Committee on Industrial Relations. (Signed) W. H.
George, Chairman. WHG-c."

EXHIBIT No. 55 TO ROGERS' AFFIDAVIT

City and State: San Francisco, California,
Date: April 18, 1922.

Salesman: George P. Schwaab.

"The Sandusky Cement Company:

Subject: Labor troubles at San Francisco

This city is in the throes of a labor battle with the consequent result that construction work is greatly restricted. The unions insist on closed shop and are enforcing some objectionable restrictions, such as limiting a day's work and rules on apprenticeship. The San [fol. 520] Francisco Chamber of Commerce is back of what is known as the "American Plan" which permits them employment of labor whether union or non-union. The Builders Exchange officially is supporting the Chamber of Commerce and is committed to the "American Plan." Their members are supposed not to deliver materials to jobs without permits issued by the Exchange. As it stands, however, there is not a united front and there is some talk about some dealers and contractors withdrawing their memberships. When the matter will be settled is dubious. Last year building was tied up here for nearly four months. It is affecting buying as dealers do not know how to anticipate their requirements. The exchange will hold a banquet tomorrow night and I hope to learn more on the subject."

EXHIBIT No. 56 TO ROGERS' AFFIDAVIT

"Western Union Telegram

Time: 9:15 a. m. Cleveland, O., April 19, 1922.

Geo. P. Schwaab, Stewart Hotel, San Francisco, Calif.:

See George President Builders exchange immediately advising this office full data pertaining to permit system as per his Letter of April twelfth.

C. B. Rogers.

Charge the Sandusky Cement Co."

EXHIBIT No. 57 TO ROGERS' AFFIDAVIT

"Western Union Telegram

Telegram

Time: 9:15 a. m. Cleveland, O., April 19, 1922.

Geo. P. Schwaab, Stewart Hotel, San Francisco, Calif.:

See George President Builders Exchange immediately advising this office full data pertaining to permit system as per his letter of April Twelfth.

C. B. Rogers.

Charge the Sandusky Cement Co.
Confirmation."

EXHIBIT No. 58 TO ROGERS' AFFIDAVIT

Subject: Permit system in effect at San Francisco, Calif.

City: San Francisco, State: California,

[fol. 521]

Date: April 20, 1922.

Salesman: George P. Schwaab.

"The Sandusky Cement Co., Sales Manager, Cleveland, Ohio.:

I got to Mr. W. H. George just as soon as I could after the receipt of your telegram on the above subject. I would have wired you a reply but Mr. George would rather that I do not.

I wrote you on the 18th regarding the labor troubles in San Francisco. It is a fight against closed shop.

The permit system is a request on the part of the Builders' Exchange that its members refrain from hauling building materials, such as cement, lime, mortar, brick, terra cotta, tile and sand to any job in the city and county of San Francisco, without a Builders' Exchange permit. The Builders' Exchange will issue permits to dealers to deliver materials on operations conducted on the 'American Plan' but not on union jobs where non-union labor is barred. Members of the Exchange are expected to secure these permits before making deliveries of materials. The Exchange sends out inspectors to see that materials are delivered per agreement with the issuing of the permits.

EXHIBIT NO. 59 TO ROGERS' AFFIDAVIT

City, —; State, —; date, —; salesman, —.
 Subject: —.

"The Sandusky Cement Company, Sales Manager, Cleveland, Ohio:
 Manufacturers are requested to apply for a permit before shipping
 dealers.

The Mayor, Chamber of Commerce, The Builders' Exchange and
 the leading business men of San Francisco are backing the "American
 Plan."

EXHIBIT NO. 60 TO ROGERS' AFFIDAVIT

"The Builders' Exchange

San Francisco, Calif., June 30, 1922.

Sandusky Cement Co., c/o Geo. Schwaab, Esq., Stewart Hotel, San
 Francisco, Calif.:

[fol. 522] GENTLEMEN: Effective at once and to further carry out
 the resolution adopted by the Central Council of the Builders' Ex-
 change on April 12th, 1922, reading as follows:

'At a called meeting of the Central Council of the Builders' Ex-
 change held this 12th day of April, 1922, a quorum being present,
 it was resolved that the Builders' Exchange, represented by its affili-
 ated crafts, reaffirms its allegiance to the American Plan and the
 wage award of the Impartial Wage Board for the year 1922, and in-
 structs its Industrial Relations Committee to take the necessary steps
 to see that the American Plan is properly carried out and that the
 wage award is properly enforced in all crafts in the City and County
 of San Francisco for the balance of the year 1922.

It is now necessary to add to the permit system in addition to ce-
 ment, lime, plaster, ready mixed mortar, common brick, fire and
 face brick, terra cotta and all clay products, sand, rock and gravel,
 wall board, button lath, Keene Cement and all plaster products for
 the Counties of San Francisco, San Mateo and Santa Clara the fol-
 lowing articles:

Wire lath and metal lath of all kinds.
 Wood lath.

Kindly be governed accordingly and see that you have a permit
 on hand for all L. C. L. as well as carload deliveries.

Yours very truly, Builders' Exchange of San Francisco. W.
 H. George, President and Chairman Industrial Relations
 Committee. WHG:B."

EXHIBIT No. 61 TO ROGERS' AFFIDAVIT

"The Builders' Exchange,
180 Jessie Street, San Francisco

July 25, 1922.

Sandusky Cement Co., c/o Geo. P. Schwaab, Stewart Hotel, San Francisco, Calif.:

GENTLEMEN: I want to take this opportunity to thank you as a building material dealer of this City for the faithful way in which you have observed the Permit System for the Counties of San Francisco, San Mateo, and Santa Clara.

It is very encouraging to be able to advise you that the Industrial Association of Santa Clara County advises today, that the Union warehouse at this time is empty of materials and that Union Contractors are fast coming over to the American Plan.

[fol. 523] Also to advise you that in this City bootlegging has almost entirely ceased.

May I again at this time ask you to redouble your efforts at this particular moment to see that a permit is exacted for every delivery, carloads or less than carloads? I feel sure that the closest adherence to this matter at this time for a short time longer will entirely clean up the situation.

Thanking you for your continued cooperation, remain

Yours very truly, W. H. George, Chairman Industrial Relations Committee. WHG-b."

EXHIBIT No. 62 TO ROGERS' AFFIDAVIT

The Builders' Exchange,
180-188 Jessie Street

San Francisco, Cal., Jul. 29, 1922.

George P. Schwaab, Esq., 626 Engineers' Bldg., Cleveland, Ohio.

DEAR MR. SCHWAAB: The President of this Exchange has been requested by petition signed by slightly over 50 members of the Builders' Exchange to call a special meeting of the Builders' Exchange, for the purpose of discussing the present Permit System now in vogue.

This meeting has been called for Tuesday, August 1st, 1922, at 1.30 P. M.

This meeting will develop a vital issue to the welfare of the Builders' Exchange and its affiliated crafts, as well as of most vital community interest in connection with the work which has been carried on in San Francisco for almost two years now.

May I ask you to make a special record of this important matter, and lay all things aside and be present at this meeting prepared to cast your vote so that the right may prevail and the American Plan continue in our city?

Yours very truly, (Signed) W. H. George. W. H. George.
WHG-b."

[fol. 524] EXHIBIT NO. 63 TO ROGERS' AFFIDAVIT

"The Builders' Exchange,
180-188 Jessie Street

San Francisco, Cal., Aug. 4, 1922.

Sandusky Cement Co., 626 Engineers' Bldg., Cleveland, Ohio:

I assume you were present at or have heard of the Mass Meeting held at the Builders' Exchange on last Tuesday, August 1st.

The result was that a motion to abandon the Permit System was almost unanimously beaten, therefore the Permit System is in full force and effect.

We are now tightening up on the whole system with the hope of cleaning the entire situation up within a couple of weeks, which of course is what we all desire. Therefore your closest attention is requested to the details of the Permit System.

Will you kindly be advised that no permits will be good longer than 15 days from their date. Therefore please take up and demand new permits if any are presented to you older than 15 days from their date.

We are also instructing Mr. Drury, the auditor, as he checks the permits to take them up so that no old permits may be in existence anywhere.

Please be advised that effective at once at the request of the Alameda County Industrial Association and of the Alameda County Builders' Exchange, the Permit System is hereby extended to take in Alameda County, therefore from this date the Permit System on cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products, sand, rock and gravel, wall board, button lath, Keene Cement and all plaster products, wire lath, metal lath of all kinds and wood lath, is in effect for the Counties of San Francisco, San Mateo, Santa Clara and Alameda.

Please be sure that you have on hand a permit for every delivery, either carload or less than carload and to either dealer or consumer.

Yours very truly, (Signed) W. H. George. W. H. George.
Chairman Industrial Relations Committee. WHG-b."

EXHIBIT No. 61 TO ROGERS' AFFIDAVIT

"The Builders' Exchange,

180-188 Jessie Street

San Francisco, Cal., Dec. 18, 1922.

Sandusky Cement Co., 626 Engineers' Bldg., Cleveland, Ohio.

Attention of Mr. C. B. Rogers

[fol. 525] GENTLEMEN: It is with a great deal of pleasure as the old year draws to a close that I thank you on behalf of the San Francisco Builders' Exchange for the cooperation which you have given us in the maintaining of the Permit System, the very necessary agency for maintaining the American Plan.

May I remind you at this time that the Permit System is still in full effect for the Counties of San Francisco, San Mateo, Santa Clara and Alameda.

That you must insist on having in your office a permit for all deliveries in these Counties, made either to dealers or contractors, on the following building materials.

Cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath, and metal lath of all kinds, wood lath, Keene cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

It is apparent that it will be necessary in order to sustain the position which we have acquired in this community to keep up the Permit System throughout the year 1923, so your continued cooperation and courtesy extended to Mr. Gage, our Auditor, will be very much appreciated.

Trusting that you have had a prosperous year through the increased activities in the building business made possible by the maintaining of the American Plan, and wishing you all the compliments of the season, including a happy and prosperous 1923, remain

Yours very sincerely, Builders' Exchange of San Francisco,
by Committee on Industrial Relations. (Signed) W. H.
George. W. H. George, Chairman. WHG.-b.

P. S.—Please remember that permits presented more than fifteen days after their date are null and void and will be taken up by the Auditor the same as used permits."

EXHIBIT No. 65 TO ROGERS' AFFIDAVIT

"Mr. George P. Schwaab, Sales Representative.

MY DEAR GEORGE: I have read with a great deal of pleasure your letter of March 31st in reply to mine of the 26th of February concerning your reports, etc. since you left this office.

George, personally, I feel you are working just as hard as any one in our employ, including the writer. On the other hand, you must appreciate that we are just as anxious at all times to know what you are doing as you are yourself in doing it.

Your reports up to the time that I wrote you were anything but [fol. 526] satisfactory. I think I quoted you a sample of one.

Now, the instance you refer to—that of the San Francisco Permit System—it is very evident from your statement that you do not get all the circulars that are being mailed out by the San Francisco Builders' Exchange under the name of W. H. George. If you did, you would readily see why the question was raised asking the names of different counties in which permits are requested. While on this permit question, let me cite you a handicap under which we are operating: our competitors are not required to secure permits in their name, but rather all permits for our competing brand are secured thru the Pacific Portland Cement Company. This is entirely due to the different method in marketing our product. Personally, I do not favor, from our standpoint, this permit system. I am afraid the "kick-back" when it is about to be discontinued is going to affect us greater than our competitor. It is due to that one fact alone, that they, as manufacturers, are not particularly known in connection with the permit system.

Now, under subject of marking our Waterproofed White sacks. You were in attendance at our Sales Meeting when this was thoroughly discussed; you are familiar with the type of sack that we will eventually have; you must know it is not possible to get these sacks over night. Just now it takes anywhere from 45 to 60 days to secure a carload of paper sacks, especially where we are ordering a special sack. It is with pleasure that I now advise you that sometime in the near future (I don't dare give you the exact date as you may not get them at that time) we will have for our Waterproofed White Cement in both paper and cloth sacks, a solid red sack. We will have a solid red sack on paper, this has been assured; it may not be possible for us to get a solid red sack on cloth. If it is not possible, we will then adhere to the red stripe in cloth, in, as you state 1 1/8" letters, as you were. On the other hand, George, you are over seven years of age; you must realize what it means to change any system immediately from that which has been in operation for a period of twenty years, especially when that system has been used or employed by the same men. First, we have to 'sell' the men in order to secure results, just as much as I have to try to 'sell' you on any ideas that I may have.

Your statement as to not having been advised of changes as an 'alibi' when not reporting conditions does not 'hold water' George. You're too old a man to hide behind alibis of this nature.

You have done exceptionally good work for us on the Coast, and there is no one appreciates that more than the writer, and I feel that you are going to continue to do good work for us on the Coast, but don't let 'down the bars' as to keeping us advised regarding just what you are doing. There are many angles that arise possibly

overnight that no one is responsible for but the writer, and he must know at all times actual conditions to enable him to 'jump' or hold back, as the occasion arises.

I am not entirely satisfied, George, with the manner in which you are handling the Riverside Portland Cement Co. I dislike very much to 'harp' on a subject. I know your feeling toward Macbeth and, in a sense, I do not blame you, so far as he's concerned; but, don't forget that he is a customer of ours—a good customer of ours—and he is a—— So long as we sell him, we must play with him. He has just written to the effect that whereas you were down [fol. 527] to the wharf at the arrival of the Santa Rosa and did all you could at that time, you left town without seeing him personally and he does not know where you were going or where you are. Now, personally, I feel that you keep your trade pretty well advised as to your whereabouts. I want you to include at once in that letter of advice to your trade, the name of Riverside Portland Cement Co. and in advising that company where you are, address your letter to Norman Macbeth. You will find that if you will play with this fellow a little while, things will run very easily for you; but do not overlook this chance, George. I know you have called there and I know that you are not quite in sympathy with our selling the Riverside Portland Cement Company, but I want you to disabuse your mind of this and treat them the same as you do Gordon & Harrison or any other dealer in Los Angeles. If you will do this, you will find smooth, clear sailing for you and us.

We have just received the news of a change in freight rate to Portland, Ore. There seems to be little discrepancy as to what the rate will actually be. We wired you yesterday and today we find another change. This change, however, applies to Portland only and as soon as we get the correct 'dope', will advise you accordingly.

With kindest personal regards, and trusting your trip north will prove beneficial to all concerned, I am,

Very truly yours, — — —, Sales Manager. CBR:S.

P. S.—Galbraith & Co. will more than likely raise the question with you as to our quoting a job direct. I sent you a copy of my reply, to which we have received no reply. C. B. R."

EXHIBIT NO. 66 TO ROGERS' AFFIDAVIT

City, San Francisco; State, California; date, March 31, 1923:
salesman, Schwaab.

Subject: Preparing Reports.

"The Sandusky Cement Company, Sales Manager, Cleveland, Ohio.

MY DEAR CHIEF: In reply to your letter of the 26th instant, would advise there is nothing particularly wrong and I had not realized my reports have not been up to standard. As you know, I

see a great many of our customers at night and it is quite probable I rushed some of the correspondence to get it off. As you do, I realize our competition is keener this year, and with this point in mind, I am endeavoring to make our friends more loyal by keeping in close touch. This takes time.

I will admit, however, that at times I have been a little discouraged over the apparent lack of consideration given some of my correspondence. I have put in many hours overtime trying to post you on conditions and then it would seem to be labor lost. To illustrate [fol. 528] what I mean I'll cite the San Francisco permit plan. I did all I could to keep our office informed as to the working of the system and yet it was only two weeks ago I was asked for the names of the different counties in which permits are requested. The subject of making our waterproofed white sack is another case that comes to mind. As you know, I was like a voice crying in the wilderness on this subject, until you come to the conclusion I was 'dippy'. Gordon & Harrison had some waterproofed white shipped in January and it was stencilled in 1 1/8" letters. If there has been a change I have not been advised of it, although I assume from copies of correspondence to the steamship companies that we have a new package. If there has been no change, the reporting of conditions does not help much.

Your letter as to the arrangements I used in Los Angeles was answered on March 21st and doubtless you have my reply in this.

At times I get criticisms I don't quite deserve, and it makes the path rougher. If I'm wrong, I'll take what is coming to me but I have our company's interests at heart as much as anyone on your force and I'm out to make results talk at the end of the year. That, I assume, is the big idea after all.

EXHIBIT No. 67 TO ROGERS' AFFIDAVIT

City, Seattle; State, Washington; date, April 20, 1923; salesman, Schwaab.

Subject: —.

"The Sandusky Cement Company, Sales Manager, Cleveland, Ohio.

Attention Mr. C. B. Rogers

MY DEAR CHIEF: In reply to your letter of the 12th instant.

Bravo! I am tickled to death to learn we will have a red sack for our waterproofed white. I think we can make it a 'knock-out' and feel it has wonderful possibilities in advertising. It will also eliminate shipping troubles. (Please refer to my report of today on A. W. Morrison, Seattle.)

I note your remarks regarding the Permit System in the San Francisco Bay district. As far as I know, I have had all the Ex-

change circulars and have made it a point to forward copies to our office promptly.

I am attaching one dated August 4, 1922, copy of which was mailed our Cleveland office. You will note the system is in effect in the counties of San Francisco, San Mateo, Santa Clara and Alameda.

[fol. 529] I do not see any ground for worry over the subject of permits. The only out-laws are the Civic Center Supply Co., the Gray-Thorning Lumber Co., and the Golden Gate Materials Co. The last named is a contractors' buying organization. The first two are not heavy white cement users normally. Most of the tonnage we get from them was 'boot-legged.' On the other hand, the Pacific Portland are in sympathy and are cooperating. It is true, of course, that the Atlas Company is not known in this connection as we are.

I am glad to learn you are pleased with the work as whole out here and I can assure you I've got my heart set on beating any previous showing. And I'll make it a point to keep you posted.

As for the Riverside situation—I have no ill feeling toward Mr. Macbeth. As a matter of fact, I like him very much. However, they did not show the right spirit when that paper shipment landed. When I saw I would need another supply of cloth sacks on Saturday for Sunday's work I tried hard to locate Mr. Macbeth. I even talked with Mr. Macbeth over long distance telephone and asked her to be kind enough to have him call me at six o'clock. He was expected home at that time to dress for dinner. He did not call me although he doubtless knew what I was up against. On the other hand, our friend Faulkner, who was also going out with his family, loaded 400 sacks in a brand new touring car and brought them down to the dock for me at eight o'clock Saturday night, so we could resack Sunday and get the debris cleaned up.

When I called at the Riverside office Monday, Mr. Macbeth was not in and they did not expect him that day. I had no reason for thinking it would be necessary to see him and went over matters with their Mr. Leonard.

However, I'll drop him cards the same as I do the other buyers. Upon my return to Seattle yesterday, I received your message advising that conditions at York do not warrant further solicitation. I have some business in sight in the Bay district. I am particularly desirous of getting a start with the Atlas Mortar Co., and am promised their next order. I have also orders in sight from Powell Bros., Contra Costa, Guerin, Pacific Materials and Galbraith within the next two or three weeks. If you can take the business please solicit their orders and explain conditions.

I would also like to have you advise all our trade on the impending freight rate increase.

Thank you for good wishes. It's too darned cold to hang around up here this time of the year and will lay up somewhere down South when I find a place for our transit cars.

EXHIBIT NO. 68 TO ROGERS' AFFIDAVIT

City, San Francisco; State, Cal.; date, 8/1/23; salesman, G. L. Brown.

Subject: Permit System.

[fol. 530] "The Sandusky Cement Company, Sales Manager, Cleveland, Ohio:

Interviewed Mr. W. H. George, Chairman, Industrial Relations Committee, San Francisco, and had pleasant interview with him.

Mr. George showed me copy of his letter in reply to Mr. George's letter of July 11th. He stated that all dealers in the territory affected, secure permits for all lines of building materials, and when ordering cement or any other commodity, they always secure permit and attach same to the order for the manufacturer. I mentioned to him that in a number of instances dealers wire their orders to us just prior to departure of a steamer, to which he replied that such dealers can advise us permit number by wire and then mail confirming permit to Clev. Office.

Mr. George stated that if requested, all the dealers in good standing would be willing to co-operate with us along this line, inasmuch as it is to their own advantage.

I would suggest we issue circular letter to all our dealers, requesting them to always show permit number in wire, followed up by confirming permit by mail.

The following dealers are black-listed:

Golden Gate Mtl. Co.

Civic Centre Sup. Co.

Gray-Thorning Lbr. Co.

Golden Gate Mtl. Co., is operated by five plastering contractors, who are in the business merely to secure materials at the dealers' prices.

EXHIBIT NO. 69 TO ROGERS' AFFIDAVIT

"The Builders' Exchange, 180-188 Jessie Street

San Francisco, Cal., Aug. 2, 1923.

Sandusky Cement Co., 626 Engineers Building, Cleveland, Ohio.

Attention of Mr. C. B. Rogers

GENTLEMEN: Referring to letter of May 18th, 1923, please be advised that at the request of the contractors and material men of San Mateo County, that a branch Permit Department will be opened up in San Mateo County for San Mateo County, and located at 305 San Mateo Drive, Burlingame.

[fol. 531] Therefore effective Friday morning, August 3rd, 1923, no material covered by the Permit system will be shipped to San Mateo County, delivered to any one in San Francisco to haul to San Mateo County except on presentation of a San Mateo County permit.

As heretofore manufacturers will honor San Francisco Builders' Exchange permits from all dealers in San Mateo County.

Yours very truly, (Signed) W. H. George. W. H. George,
Chairman Industrial Relations Committee. WHG-b."

AFFIDAVIT OF FRANK E. KNIGHT ON BEHALF OF COMPLAINANT

Comes now Frank E. Knight, who, after being duly sworn on oath, says:

That he is the Secretary of The Best Brothers Keene's Cement Company, a corporation organized under, and by virtue of, the laws of the State of Kansas.

That on or about the 23rd day of April, 1923, the above named corporation received through the United States mails a certain letter dated the 19th day of April, 1923, on the stationery of Henry Cowell Lime & Cement Company; said letter purported to bear the signature of W. H. George, Secretary.

A copy of said letter is hereunto attached, and marked Exhibit "A".

That said letter was addressed to The Best Brothers Keene's Cement Company, and is in the files of said company at this time.

[fol. 532] EXHIBIT "A" TO KNIGHT'S AFFIDAVIT

Henry Cowell Lime and Cement Co., 2 Market Street, San Francisco

April 19, 1923.

Best Bros. Keene's Cement Co., Medicine Lodge, Kansas.

Attention of Mr. Thos. Best

DEAR MR. BEST: A situation has arisen here that I think ought to be called to your attention. I am now referring to your letter of March 6th, paragraph before the last on the second page. I find considerable protest here from our recognized dealers and fear that your tonnage is not going to be well taken care of here if you are going to ship contractors and unrecognized building supply dealers. The recognized dealers feel that it is not fair for you to be shipping contractors like MacGruer & Simpson. In other words if you want the contractor trade direct how can you expect the recognized dealer trade?

Also in regard to the unrecognized Golden Gate Building Material Co. I explained to you the situation when you were here that

this outfit was the bootlegging outfit for the Union plasterers and they are still at the same game, and the recognized dealers are not going to be in favor of handling material which is also handled through this unrecognized outfit who are not members of the Builders' Exchange and who will not be accepted. Of course, MacGruer & Simpson get a big job once in a while, and are only buying from you because at present they can not buy from anybody else. You will only hear from them occasionally when they have a big job for Keene's Cement. In the meantime the dealers are dissatisfied. Kindly let me hear from you by return mail on this subject.

Yours very truly, (Signed) W. H. George. W. H. George,
Secretary. WHG-b.

[fol. 533]

EXHIBIT IN EVIDENCE

Copy

Department of Justice, Bureau of Investigation

STATE OF KANSAS,
Barber County, ss:

I, Thos. J. Best hereby certify that the letters hereto attached are the original letters and the replies thereto taken from the files of Best Bros. and are all the letters in said files pertaining to correspondence between Best Bros. and Golden Gate Building Material Co. Steffens Lomax Co. W. H. George, and W. H. George President Builders' Exchange.

Dated Oct. 15-1923.

(Signed) Thos. J. Best

(Copy)

April 28, 1923.

Mr. W. H. George, the Henry Cowell Lime & Cement Co., San Francisco, Calif.

DEAR MR. GEORGE: I am in receipt of your favor of the 19th calling my attention to the fact that we have made shipments of Best Bros. Keene's Cement to one or two concerns in San Francisco who are not recognized dealers and to whom you think we ought not to make direct shipments.

It has always been the policy of our company to market our material through the recognized building supply dealers and for thirty years past we have been continually fighting for such a policy and believe we have supported the legitimate building supply dealer more consistently than any other manufacturer of plastering materials. We have on many occasions turned down large offers of purchase from contractors, which at the time looked very tempting to us, but, due to the stand we had always maintained—that our materials should be marketed through the building supply dealer

—we passed up these offers from contractors who claimed if they could not purchase direct from the manufacturers they would use materials which they could so do. We know in many cases where we have lost Government work entirely for the reason that we could not sell direct to Government contractors and would only furnish material to them through the regular building supply dealers. We are first, last, and all the time for the recognized building supply [fol. 534] dealer as the proper channel through which to market our product.

The two parties to whom I presume you take exception to our selling are MacGruer & Simpson and the Golden Gate Building Material Co. During the last six months we have made shipments on two or three occasions direct to MacGruer & Simpson, doing so from advice passed to us that they were members of the builders exchange and were entitled to direct shipments. We knew nothing about the standing or organization of the Golden Gate Building Material Co. and, when accepting orders from them for shipment, we were under the impression that they were one of the recognized building supply dealers. Our shipping to these two concerns undoubtedly appears to you as if our policy was one of "running with the hare and hunting with the hounds."

In a general way from information which has been gathered from the press and trade papers, we understand a very commendable fight has been made in San Francisco for the addition of the American Plan or Open Shop as against Unionism. We ourselves are strictly open shop, both in principle and practice, as we do not have a Union man in our employment that we know of.

If I am right in understanding that you as representing the building supply dealers of your city think that we should not forward or accept orders to either MacGruer & Simpson or the Golden Gate Building Material Co. but should confine our sales entirely to building supply dealers, this suggestion or request will be given our very careful consideration.

While we have no agreement to furnish MacGruer & Simpson or the Golden Gate Building Material Co. their requirements of Keene's Cement, we may have rather given the impression that we would continue accepting orders from them. We therefore feel that we would like to have a little time in which to work upon this matter so that we would not be doing an injustice to anyone or lay ourselves open to criticism for breach of faith with the parties in question.

We assure you that we are going to give the matter you have brought to our attention our very best consideration, but would like to have a little time in which to work the problem out.

Awaiting your further pleasures, we are

Yours very truly, The Best Bros. Keene's Cement Co.

TJB:N.

Copy

Henry Cowell Lime & Cement Co., 2 Market Street, San Francisco,
Calif.

May 2nd, 1923.

[fol. 535] Best Bros. Keene's Cement Co., Medicine Lodge, Kansas

Attention of Mr. Thos. Best

DEAR MR. BEST: When I wrote you on April 19th I was under the impression that during the time you visited with me I explained to you very thoroughly our industrial situation here. However I hope my letter of April 19th made the matter plain to you. I note you stand in regard to the recognized legitimate building supply dealers and you are certainly correct in that. That has been our policy since 1849.

Therefore it is odd that you did not know that MacGruer & Simpson are purely and simply plastering contractors, and never were or claimed to be anything else. So far as the Golden Gate Materials Co. is concerned my letter of April 19th explains their status exactly and there has been no change in the situation.

It is odd, but Mr. Cadman called me up this morning protesting about the very thing that I had already written you about. Mr. Cadman, as you know, is the Manager of the Atlas Mortar Co. and I certainly am expressing to you the opinion of the building supply dealers of this city. MacGruer & Simpson will have no trouble whatsoever in buying from the legitimate dealers as we value them highly as customers.

Under our industrial situation here it is important that this matter receive speedy attention.

Yours very truly, (Signed) W. H. George. W. H. George.
Secretary. WHG-b.

Copy

May 8, 1923.

The Henry Cowell Lime & Cement Co., San Francisco, Calif.

Attention of Mr. W. H. George

DEAR MR. GEORGE: We are in receipt of your favor of the 2nd passing to us additional information as to the conditions in San Francisco affecting the building supply dealers.

On receipt of your letter of April 19th we instituted inquiries through a few of our friends in San Francisco, such friends not being interested in the building material trade. We have had what we feel is useful information from such friends and, acting on the same, we have decided that we shall not accept orders for direct shipment or make shipment to the Golden Gate Materials Co. in the future and we have notified this firm of our intentions in this direction. This part of your request as mentioned in your letter of April 19th we have acted upon in a manner which we trust is

satisfactory to you. As regards MacGruer & Simpson, one of our [fol. 536] friends advises that upon his making inquiries he finds that MacGruer & Simpson are now members of good standing of the Builders' Exchange and that manufacturers of plastering materials are accepting orders for direct shipment from them.

This information would be of no inducement to us in continuing to sell direct to MacGruer & Simpson but from another source we are advised that it would be decidedly to our advantage—for the time being, at any rate—if not as a permanent proposition—to sell direct to them for the reason that they are the best boosters in San Francisco for lime mortar gauged with Best Bros. Keene's Cement as a plastering material and that they are recommending such material very strongly to owners and architects.

The friend passing this information to us suggests that if we should decline to accept orders from MacGruer & Simpson it might change their attitude and, if so doing, the loss of their recommendation and their desire to have our material more largely specified by the architects would be a decided loss to us.

The writer personally wishes to assure you that we wish to meet your suggestions and also the suggestions of Mr. Cadman of the Atlas Mortar Co. and, as soon as we can arrange to confine all of our business to the building supply dealer, it is our intention to do so. We feel that we have, by deciding not to have any future business relations with the Golden Gate Material Co., overcome one part of the problem but we would like to have a little time in which to work out the MacGruer & Simpson problem as we realize they have rendered us some distinct services, especially with architects in having them specify Best Bros. Keene's Cement and lime as the most practical plastering material.

Our feeling in this direction is that, if we can get a little more firmly re-established in the San Francisco market, we will then be able to handle the MacGruer & Simpson matter to probably better advantage with less sacrifice on our part. We feel that MacGruer & Simpson have given us some good advertising recently in both San Francisco and in Los Angeles as, through their recommendations to architects, we have in southern California obtained some work which none of our dealers there were able themselves to obtain from the architects. We therefore feel that MacGruer & Simpson are entitled to some little consideration from us. At the same time we will as soon as we can arrange to do so without creating any ill-feeling, try and arrange with MacGruer & Simpson to make their purchases from some recognized dealers in your city.

Assuring you that we wish you every success in the future you are making to correct the labor evils that have prevailed so long in San Francisco and that have been such an obstacle to industry, we are

Yours very truly, The Best Bros. Keene's Cement Co. TJB:N.

Copy

Henry Cowell Lime and Cement Co., 2 Market Street (at Cowell)

[fol. 537]

San Francisco, May 11th, 1923.

Best Bros. Keene's Cement Co., Medicine Lodge, Kansas.

Attention of Mr. Thomas Best

DEAR MR. BEST: I just have for acknowledgment yours of May 8th and your decision in regard to the Golden Gate Materials Co. is very correct and satisfactory.

Your position in regard to MacGruer and Simpson however, simply more than ever complicates the situation, and I want you to feel sure, Mr. Best, that I would not write you anything but the exact facts.

1. It is true that MacGruer and Simpson are at the present moment in good standing with the Builders' Exchange, and that any dealer in building materials will supply them so long as they remain on the American Plan, therefore they would have no trouble in buying your materials from us or any other materials from any other dealer under the above conditions.

2. MacGruer and Simpson are two of the five plasterers who make up the owners of the Golden Gate Materials Company, the bootlegging institution which you now understand, and which they and the other owners are trying to perpetuate so as to keep themselves in position should they want to jump the traces once again.

3. I know positively that MacGruer and Simpson are not boosters for lime mortar gauged with Keene's Cement. If they were I would love them better than I do now naturally. The fact of the matter is that they are always hardwall men when they can. The present big job which they have for lime mortar gauged with Keene's Cement is the Matson job, and it is Bliss & Faville's specifications that are causing them to use lime mortar gauged with Keene's Cement. Bliss & Faville, the architects, are in season and out of season lime mortar gauged with Keene's Cement men, and will not permit anything else on their work. That is the real fact of the matter.

I will say no more and leave it to your own good judgment, but as you stated in your former letter, you realize that building material dealers don't like to handle manufactured articles which the manufacturers sell to them and also sell direct to contractors.

Yours very truly, (Signed) W. H. George. W. H. George,
Secretary. WHG-b.

P. S.—It is manifestly apparent that MacGruer and Simpson are going to supply the Golden Gate Materials Co. with what Keene's Cement they want. WHG-b.

[fol. 538] AFFIDAVIT OF W. K. HUGHES ON BEHALF OF
COMPLAINANT

W. K. Hughes, being first duly sworn, deposes and says:

That he is the W. K. Hughes who made an affidavit in the above entitled case, on October 15, 1923; that said affidavit was made when affiant was unable to give the same his entire attention because of an immediate and important other matter then pending, demanding concentrated and prompt action; that affiant has read the aforesaid affidavit more closely since its execution and desires to change an obvious, unintentional misstatement of fact; that the statement desired to be changed is as follows:

"Whereby affiant advised officers of the Golden Gate Building Material Company of said conversation with the said Levy and Fagan, and upon the earnest solicitation of affiant the said Golden Gate Building Material Company released affiant from said contract; whereupon affiant advised the Industrial Association of San Francisco that said contract with the said Golden Gate Building Material Company had been canceled, and that affiant, by reason of having been compelled to cancel said contract, had suffered a loss of the commission involved in the sale of said lime and made demand upon said Leon Levy for payment of said commission."

That in lieu of the foregoing statement, affiant does depose and say:

"Whereby affiant advised officers of the Golden Gate Building Material Company of said conversation with the said Levy and Fagan, and that affiant was either going to assign or sell to said Industrial Association said contract; and thereafter, to-wit, some weeks later, upon the earnest solicitation of the said Golden Gate Building Material Company, it was mutually agreed between affiant and said Golden Gate Building Material Company to cancel said contract; whereupon affiant advised said Leon Levy that the said contract with the said Golden Gate Building Material Company had been canceled and that affiant, by reason of having to cancel said contract had suffered a loss of the commission involved in the sale of said lime, and made request upon the said Leon Levy for payment of said commission, as per letter of November 1, 1922 (copy of which letter is attached to aforesaid affidavit of affiant dated October 15, 1923.)"

W. K. Hughes."

[fol. 539] AFFIDAVIT OF W. H. GEORGE ON BEHALF OF DEFENDANT

W. H. George, being duly sworn, deposes and says: That he is a citizen and resident of the City and County of San Francisco, State of California. That during all the times mentioned in the complaint on file herein he has been and now is Secretary of defendant Henry Cowell Lime & Cement Co.; that during all the said times said Henry Cowell Lime & Cement Co. has been and now is a member of the de-

fendant, Builders' Exchange of San Francisco. That during all the said times, said Henry Cowell Lime & Cement Co. has been and now is a corporation organized and existing under the laws of the State of California, having its office and principal place of business in the City and County of San Francisco, in said State, and its manufacturing plant and works in the County of Santa Cruz, in said State. That said corporation is engaged in the business of manufacturing and selling cement, lime and building materials.

That ever since about the first day of May, 1922, this affiant has been and now is the regularly elected, qualified and acting president of defendant Builders' Exchange of San Francisco. That for about a year prior thereto, he was Chairman of the Strike Committee of the Builders' Exchange of San Francisco, which strike Committee had an important part in the handling of the strike commencing about May, 1921, referred to in the answer of defendants. Industrial Association of San Francisco, et al., which said answer is hereby referred to by affiant, and those portions of said answer describing the organization, nature, purposes, character and activities of the Industrial Association of San Francisco and the Builders' Exchange of San Francisco, are hereby expressly made a part of this affidavit.

Affiant avers that ever since about the first day of June, 1921, the Builders' Exchange of San Francisco, by resolution regularly adopted [fol. 540] by its board of directors, declared for the economic principles of the Open Shop in the building industry of San Francisco, and pledged its support and the support of its members to the maintenance of the Open Shop in San Francisco. That for the purpose of keeping its members advised concerning those members and others erecting buildings in the City and County of San Francisco who were doing the same on the open shop plan, or were doing the same on the closed shop union plan, said Builders' Exchange maintained and operated a system of reports giving the exact information as to what builders, contractors and subcontractors were operating on the American plan and what were not operating on the American plan. That this system was created and maintained for the purpose of giving to each and all members of the Builders' Exchange of San Francisco such information so that they should in effectively maintaining the open shop, let contracts to builders, contractors and subcontractors who were operating, and would operate upon the open shop plan, and sell California building materials to the same, and should and could also refrain from giving contracts to any builders, contractors or subcontractors who did their work in San Francisco exclusively on the closed shop union plan in violation of the rules and regulations of the Builders' Exchange, and should decline to sell California building material supplies to them.

That the term "closed union shop" or "closed shop union conditions," as understood by the Builders' Exchange of San Francisco, means and meant that condition under which a builder, contractor, or subcontractor, working in the City of San Francisco, would refuse under any and all conditions to employ, or permit to be employed, any building trades mechanic or laborer who did not belong to a San Francisco labor union, while the term "open shop" meant and means

that condition under which a builder, contractor, or subcontractor, [fol. 541] needing the services of a building trades mechanic or laborer, would not refuse to employ such trades mechanic or laborer, who was otherwise competent and reputable, merely because of his nonmembership in that union. That said Builders' Exchange of San Francisco never did adopt or pass any resolution declaring and defining the American plan or open shop plan to be or to mean the employment of a foreman and at least fifty per cent of the laborers, skilled and unskilled, from the ranks of nonunion men, and has never ordered, requested or urged any of its members to refuse to do business with or withhold business from, or to refuse to sell materials to or withhold materials from anyone because of the employment of fifty per cent union men and a union foreman. It is true that a committee of the Builders' Exchange, called the "Central Council," did about the middle of the year 1921 adopt a resolution declaring the open shop or the American plan to require the employment of a nonunion foreman and at least fifty per cent nonunion mechanics and laborers, but it is likewise true that the Board of Directors of said Builders' Exchange has neither approved nor ratified, nor confirmed, and has always refused to ratify or confirm said resolution of said Central Council, and the said resolution has never become the official or other act of the Builders' Exchange of San Francisco but, on the contrary, the Builders' Exchange of San Francisco has officially, and as a corporation, and otherwise, and through its individual members, always acted upon the principle that the willingness to employ a competent nonunion man would make of a contractor one operating on the open shop plan.

This affiant further alleges that in the operation of the system of the rules, hereinbefore referred to, guiding members of the Builders' Exchange in their dealings with other persons, all persons employing, or willing to employ, not less than one nonunion man with a union man has always been considered and acted upon as an open shop [fol. 542] contractor, builder, or subcontractor, and no attempt has ever been made by the Builders' Exchange to interfere with anyone so operating upon the open shop plan as thus defined.

Affiant further alleges that the system of reports hereinbefore referred to designated in some of the affidavits of complainant as the "permit system," was operated exclusively by the Builders' Exchange, and no one else.

Affiant further alleges that the Building Trades Council of Santa Clara County, according to the information and belief of affiant, is a voluntary unincorporated labor organization, composed exclusively of union building trades mechanics. That said Building Trades Council is an association of representatives of various building trades unions in Santa Clara County and is not usually engaged in any commercial business. That for many years last past, there has been trouble and litigation between the Building Trades Council of Santa Clara County and the Henry Cowell Lime & Cement Co., and this affiant. That for many years past, the said Building Trades Council of Santa Clara County did boycott said Henry Cowell Lime & Cement Co., and this affiant, and did boycott and blacklist the products

manufactured and sold by said Henry Cowell Lime & Cement Co., in Santa Clara County, State of California. That as the result of said unjust and unlawful boycotts and blacklists of said products of said Henry Cowell Lime & Cement Co., by said Building Trades Council of Santa Clara County, the said Henry Cowell Lime & Cement Co., commenced an action in the courts of the State of California against said Building Trades Council of Santa Clara County praying for damages for said unjust and unlawful boycott and blacklist, which action is still pending. That said action was commenced more than two years ago. That said Henry Cowell Lime & Cement [fol. 543] Co., has never sold any of its goods to said Building Trades Council of Santa Clara County and has always refused to sell the same to them. That affiant is informed and believes, and on such information and belief avers the fact to be, that since about the first day of March, 1922, said Building Trades Council of Santa Clara County has engaged in the business of buying cement and certain other building materials which it in turn sold only to contractors and builders in Santa Clara County doing work on a closed shop union plan, and has always refused to sell anything to any contractor or builder who employed any non-union labor, and that by reason thereof and by reason of the pendency of the litigation hereinbefore referred to said Henry Cowell Lime & Cement Co., and this affiant have always refused to sell cement to said Building Trades Council of Santa Clara County, and have always refused to permit said Building Trades Council of Santa Clara County to have or deal in the goods of said Henry Cowell Lime & Cement Co., so far as said Henry Cowell Lime & Cement Co., could prevent it.

That on or about the 12th day of May, 1922, a representative of the firm of Thomas W. Simons & Co. called on the said Henry Cowell Lime & Cement Co. to purchase cement. That said Henry Cowell Lime & Cement Co. then and thereupon made inquiry as to what the said Thomas W. Simons & Co. desired to do with said cement and whom they desired to sell it to and where they desired to send it. That in order to obtain said cement, the said Thomas W. Simmons & Co. did thereupon represent in writing that they desired to purchase said cement for the purpose of exporting the same upon the Steamer "St. Louis" to the port of Manzanila, Mexico. That at the time said representation was made, the said Thomas W. Simmons & Co., as this affiant is informed and believes, and therefore alleges the fact to be, had no intention of exporting the [fol. 544] said cement but intended solely to purchase the said cement from said Henry Cowell Lime & Cement Co., in order to deliver the same to said Building Trades Council of Santa Clara County. That said Henry Cowell Lime & Cement Co., believing the written representations of said Thomas W. Simmons & Co., arranged to deliver the cement ordered, but shortly after the first deliveries thereof the said Henry Cowell Lime & Cement Co. found out that said Thomas W. Simmons & Co., instead of shipping the said cement to Mexico, was delivering the same to the Building Trades Council of Santa Clara County, in the City of San Jose. That thereupon, said Henry Cowell Lime & Cement Co., protested to said Thomas W.

Simmons & Co. against the breach of faith and withheld delivery of the remainder of said cement ordered by said Thomas W. Simmons & Co., and the said Henry Cowell Lime & Cement Co., sought by every lawful means to recover possession of said cement already so delivered but found that it has already been delivered by said Thomas W. Simmons & Co. to said Building Trades Council of Santa Clara County. That at said time, neither this affiant nor said Henry Cowell Lime & Cement Co., knew of any purchase, or proposed purchase, or order, or proposed order, for the importation of Belgium cement, and this affiant denies that either he or said Henry Cowell Lime & Cement Co., has ever restrained or interfered with or impeded the importation of any Belgium, or any other, cement by said Thomas W. Simmons & Co.

This affiant further alleges that he has been engaged in the business of manufacturing and selling cement in the State of California for a great many years. That prior to 1921 there were practically no importations from foreign countries or other states of cement, but that since the establishment of the open shop in the building industries in the City and County of San Francisco, huge quantities of [fol. 545] cement have been and are constantly being imported from various foreign countries, including among them Norway and Belgium. That affiant is informed and believes, and on such information and belief alleges the fact to be, that from and including the first day of January, 1923, to and including the 12th day of May, 1923, for this short period only, about 24,000 barrels of cement have been imported.

This affiant further alleges that the Henry Cowell Lime & Cement Co., itself is importing large quantities of foreign cement. In addition to the shipments referred to since the first of January of this year, during the year 1922 huge importations of cement have been made from foreign countries and other states to the State of California. That so far as affiant is informed and believes, and so far as affiant knows, no attempt has ever been made by anyone to interfere with, restrain, or impede the importation of such cement, but, upon the contrary, most of the people engaged in the building business in the Northern part of the State of California have been interested in the importation of foreign cement as the California supply has been largely, on account of the building activities following the adoption of the open shop, inadequate to supply the demand.

Affiant further alleges that the opportunity of importing foreign cement and cement from other states is free and open to all persons and is not in any way restricted, and that any one can, and always could, purchase foreign cement and import it to San Francisco without interference.

Affiant admits that upon the discovery of the improper diversion of said cement, hereinbefore referred to, from Thomas W. Simmons & Co., to said Building Trades Council of Santa Clara County, that this affiant refused to deliver the underlivered portion of said order [fol. 546] of Thomas W. Simmons & Co., because of the fact that said Henry Cowell Lime & Cement Co., refuses, and always has refused, to sell its own domestic cement to the Building Trades Council of Santa Clara County.

Affiant admits that he has told a number of people of said diversion of the cement of Henry Cowell Lime & Cement Co., by said Thomas W. Simmons & Co., and that among other things he did consult Max J. Kuhl in connection with any right for the return of said cement or damages for the diversion thereof which the said Henry Cowell Lime & Cement Co. might have against Thomas W. Simmons & Co.

Affiant further alleges that Sage Watson, the affiant in one of the affidavits filed on behalf of complainant, was expelled from the Builders' Exchange of San Francisco, on or about July 28, 1916 for non-payment of dues. This affiant denies that he ever told Samuel Smith, as set forth in said affidavit of said Sage Watson, that if said Sage Watson would employ non-union men to be furnished by affiant, he, the said Sage Watson, could get materials, otherwise not, but affiant did tell the said Samuel Smith of the rules of the Builders' Exchange that forbade any of its members discriminating against non-union men and that if said Sage Watson discriminated against non-union men and refused to employ non-union bricklayers, if he needed bricklayers, the California Brick companies would not deliver any California brick to him.

This affiant denies that this affiant has, or that the said Henry Cowell Lime & Cement Co., has, either combined, or conspired, or confederated with other manufacturers or dealers in building materials not to sell or deliver to any person in the City and County of San Francisco, any building materials unless such person should first obtain a written permit authorizing him to buy the same, and [fol. 547] denies that the Industrial Relations Committee of the Builders' Exchange was then, or at all, authorized, and empowered, to grant or refuse such permits at will, and denies that said industrial Relations Committee was given, or should be given, or has been given, full authority and power to carry out and put into force said combination, or conspiracy, or confederation, or agreement, but in that behalf this affiant alleges that by the system adopted by the Builders' Exchange, hereinbefore referred to, in order to facilitate the free delivery of California building materials to buildings in San Francisco for the guidance of the members of the Builders' Exchange, said Builders' Exchange did conduct a system, referred to in the affidavit of Frank C. MacDonald as the "permit system", under which written certificates or permits were issued to persons building, or desiring to build, which permits or certificates operated as notices to any and all persons that the holder thereof was doing his work on the open shop plan and was refusing to discriminate against non-union men. That the Builders' Exchange had committed itself legally and by due resolution to the open shop principle and under its constitution and by-laws its members were obligated to live up to the open shop principle. Affiant is informed and believes, and alleges the fact to be, that most of the members did live up to the open shop principle of the Builders' Exchange and did do building business with and sell building supplies to persons doing work upon the open shop plan. But aside from this obligation imposed by reason of membership in the Builders' Exchange there was no conspiracy between this affiant or

any other person. This affiant avers that the Industrial Relations Committee of the Builders' Exchange is a committee lawfully conducted with said Builders' Exchange for the hearing of grievances and complaints of various kinds against members of the Builders' [fol. 548] Exchange. That said committee sits in trial upon charges or complaints entered against members and tries the same after hearing; and said committee is given the power to discipline members breaking its rules, and has at times disciplined members violating the rules of the Builders' Exchange.

This affiant denies that on or about the 31st day of May, 1922, the defendant, Industrial Association, by its officers, or members, or agents, or representatives, conspired, or combined, or confederated, or agreed, with or among themselves, or with or among the officers or members of the Builders' Exchange, or with or among the members of said Industrial Relations Committee, or with or among any or all dealers in plumbers' or steamfitters' supplies, or with any other person, that the said Industrial Association should assume charge or control, or should carry out or put into force or effect the said combination, conspiracy or confederation, or agreement, in or so far as the same effected plumbers' or steamfitters' supplies, and that this affiant further alleges that neither plumbers' supplies nor steamfitters' supplies were ever put under the system hereinbefore described regulating the handling of building materials.

This affiant alleges that aside from the financial support the Industrial Association has never controlled, or directed, the activities of the Builders' Exchange, or the members thereof.

This affiant denies that under or pursuant to any combination, or conspiracy, or confederation, or agreement, or in furtherance thereof, that the said Industrial Relations Committee agreed with the Industrial Association not to grant any permit for any of the building materials put under the permit system to any person who employed [fol. 549] any such plumbing contractor or master plumber, but in that behalf this affiant alleges that said Builders' Exchange did not grant any permits for California building materials to be delivered on any San Francisco building job, which building job was being operated upon by any contractor who in violation of the rules of the Builders' Exchange of San Francisco discriminated against all non-union men and refused to employ any.

This affiant admits that the Industrial Association has given financial support to the Builders' Exchange, but denies that the same has been done pursuant to any combination, or conspiracy, or confederation, or agreement, or in furtherance thereof, and this affiant denies that the said Industrial Association has furnished, or is furnishing, to the Builders' Exchange the name of all contractors or other persons conducting building operations contrary to the rules and regulations thereof, or the names of owners of buildings in or upon which such building operations were or are being conducted, but, on the contrary, this affiant alleges that said Builders' Exchange has acquired all such names of and by itself.

This affiant denies that it is the purpose or object, or intent, of these defendants, or either or any of them, to secure complete or

absolute, or any control or dominion over all or any part of the building materials of the City and County of San Francisco, or the counties adjacent thereto, including all building materials shipped and to be shipped into the said City and County of San Francisco, or the counties adjacent thereto, from other states or from foreign nations, and denies that it is the purpose or object or intent to prevent the sale or delivery thereof to all persons in the said City and County of San Francisco, or in the counties adjacent thereto, who do not comply with the said rules and regulations regarding [fol. 550] union labor foremen or union labor workmen, and denies that it is the purpose or object or intent of these defendants, or either or any of them, to prevent any person from importing any building materials into the City and County of San Francisco, or the counties adjacent thereto, from other states or from foreign nations and thereby prevent the sale or delivery of any such materials shipped from other states or from foreign nations to persons in the City and County of San Francisco.

Affiant denies that no person in the City and County of San Francisco, or in the counties adjacent thereto, can obtain any of the building materials put under the permit system, as aforesaid, but on the contrary alleges that a great deal of building material is coming into the City and County of San Francisco without and not subject to the permit system.

Affiant denies that because or by reason of any combination, conspiracy, confederation, or agreement, a large number of building contractors in the City and County of San Francisco have been or are unable to obtain building materials, or have been or are greatly, or otherwise, impeded, or hampered, or harassed, or interfered with in the conduct or operation of their business, or have suffered, or are suffering great irreparable injury or damage, but, on the contrary, affiant alleges that it has always been possible for any and every person operating in the building business to purchase in interstate commerce any and all building materials. And it has always been possible for any such person desiring to purchase materials solely within the State of California to obtain the same, providing such person would not unlawfully and improperly refuse to permit to be employed a mechanic or laborer who did not belong to a union.

Affiant denies that because or by reason of any combination, or [fol. 551] conspiracy, or confederation, or agreement, any owners of land in the City and County of San Francisco, or in the counties adjacent thereto, have been or are unable to obtain building materials, or have been or are unable to construct buildings or other structures upon their land, or to repair buildings or other structures upon their land, or have suffered thereby great or any damage or injury except as they may have been delayed in the obtaining of building materials due to there being none in the market. There has been a very heavy building boom on the last year and frequently it has been impossible to meet the demands at the time thereof.

Affiant denies that because or by reason of any combination, or

conspiracy, or confederation, or agreement, or because or by reason of anything except their own willful refusal to work, that a large, or any number of workmen, who are members of labor unions, have been or are unable to obtain employment, or have been or are unemployed, and thereby have suffered, or are suffering great and irreparable injury and damage. On the contrary, affiant alleges that during all the times mentioned in the bill of complaint herein there has been a great demand for all kinds of labor, skilled and unskilled, in the building industry, and there has been no need or cause for any unemployment of any mechanic or laborer in such industry save by sickness or accident. Affiant is informed and believes, and on such information alleges the fact to be, that the only unemployed building mechanics and building workers in the City and County of San Francisco within the past two years have been such workers or mechanics as may have refused, and still continue to refuse, to work upon any job or building, or for any person upon which or by whom any mechanic or laborer is employed who is not a member of the union. During some of the strikes in San [fol. 552] Francisco within the last two years union men have refused to work here or elsewhere for San Francisco contractors who have ventured to employ a single non-union mechanic, and in so refusing to work have struck, and this affiant is informed and believes that only those workmen and mechanics and laborers so striking solely because of the employment of a non-union man, have been unemployed. That during all of said time there has been a demand for the employment of building mechanics and laborers, both union and non-union, and there has been full and complete opportunity of employment for both classes of mechanics and laborers in the City and County of San Francisco and the counties adjacent thereto.

AFFIDAVIT OF MAX J. KUHLE ON BEHALF OF DEFENDANT

Max J. Kuhl, being duly sworn, deposes and says: That he is now and during all the times herein mentioned has been an attorney-at-law, duly licensed to practice as such in the courts of the State of California and this Honorable Court. That he is well acquainted with W. H. George, one of the defendants herein. That he is and for nearly two years last past has been attorney for Industrial Association of San Francisco.

Affiant has read the affidavits of J. F. Cambiano and Grant R. Bennett, filed on behalf of complainant in the above-entitled action. Affiant denies that he ever at any time instructed the Thomas W. Simmons, referred to in the affidavit of said J. F. Cambiano, to meet the affiant at the Hotel Vendome in San Jose, or in any other place, at about the hour of seven thirty o'clock, or at any other time; and affiant denies that said Thomas W. Simmons went to San Jose or any other place on the instructions or directions or request of this affiant.

[fol. 553] That on or about May 12th or 13th, 1922, affiant was consulted by W. H. George concerning the sale of certain cement from the Henry Cowell Lime & Cement Co. to Thomas W. Simmons & Co. That at said time said George presented to affiant certain documents purported to be signed by the Thomas W. Simmons Co., which documents set forth among other things the shipment of certain cement to Mexico by the Steamer "St. Louis." That said W. H. George at that time informed said affiant that said Thomas W. Simmons & Co., upon receipt by it from the Henry Cowell Lime & Cement Co. of a portion of said order, had immediately diverted the same, and instead of shipping it to Mexico were shipping it to the City of San Jose, County of Santa Clara, to be delivered to the Building Trades Council of Santa Clara County. That said W. H. George was desirous of preventing said diversion to said Building Trades Council of Santa Clara County and consulted affiant with reference thereto, instructing affiant, if necessary, to use legal means to prevent said delivery to said Building Trades Council of Santa Clara County. That said W. H. George informed affiant at said time that he had refused and would refuse to deliver the balance of said cement order from the Henry Cowell Lime & Cement Co. to said Thomas W. Simmons & Co.

That three or four days after this visit of said W. H. George, Thomas W. Simmons personally called upon this affiant at his office, and affiant believes that this was the first time that he ever met said Thomas W. Simmons. That this meeting took place, according to the statements of said Thomas W. Simmons, after the latter's visit to San Jose. This affiant thereupon represented to said Thomas W. Simmons the claims concerning the diverted shipment of said cement of said Henry Cowell Lime & Cement Co. Said Simmons admitted having diverted said cement and advised this affiant that he had gone down to San Jose seeking to obtain the [fol. 554] return of said cement, but had been unable to do so.

The cement referred to in the conversations between said Simmons and this affiant was the said cement of the Henry Cowell Lime & Cement Co., manufactured and sold within this State of California to the said Simmons.

This affiant denies that he at any time ever told or instructed or requested Samuel G. Tompkins of San Jose to represent this affiant, or to represent the Industrial Association of San Francisco.

AFFIDAVIT OF C. W. WELD ON BEHALF OF DEFENDANTS

C. W. Weld, being duly sworn, deposes and says: That he now is and during all times herein mentioned has been San Francisco Manager of Crane Co., Inc., a corporation. That said Crane Co., Inc., maintains stores and warerooms in the City and County of San Francisco from which it sells plumbers' supplies. That said Crane Co., Inc., ships a great deal of plumbing material from other

states than California to said warehouses and salesrooms in San Francisco. That said materials so sent from without the State of California are shipped to Crane Co., Inc., unloaded from cars in San Francisco and put in the general stock of merchandise carried by Crane Co., Inc., in San Francisco. That said plumbing materials, when so shipped to Crane Co., Inc., in San Francisco, upon their arrival, come here as their final place of destination and rest, and immediately upon arrival here are commingled with other goods, wares and merchandise of Crane Co., Inc. general property in the State of California. That thereafter said plumbers' materials are assorted, classified and put on the respective shelves or in the respective bins in which the general stock of Crane Co., Inc., in San Francisco is kept and from which it is sold to persons in the [fol. 555] City and County of San Francisco and elsewhere in northern California.

That upon said arrival here and said distribution and classification and placing on shelves and in bins, as hereinbefore set forth, they have ceased to be commodities in interstate commerce and are used solely as local stock in the city of San Francisco from which Crane Co., Inc., supplies its customers in northern California.

It is not true that between May 6th 1922 and until on or about December 1st 1922, said Crane Co., Inc., refused to sell and would not sell in or to be used in the City and County of San Francisco, or in the territory adjacent thereto, any plumbers' materials to any person more than one-half of whose employees are or were members of labor unions, or whose firm is or was a member of a labor union; but in that connection, this affiant alleges that during said time said Crane Co., Inc. did furnish plumbers' materials and supplies to contractors; and affiant is informed and believes, and on such information and belief avers the fact to be that some of the contractors to whom it furnished such plumbers' and steamfitters' supplies during said period of time, employed nothing but union men and nothing but union firms. In said period of time said Crane Co., Inc. at various times furnished plumbers' supplies and steamfitters' supplies, among others to A. Lettich, whose affidavit on behalf of the complainant herein, is on file herein.

Affiant does not know what statement was made by any representative of Crane Co., Inc. in the city of Chicago to the complaint that Crane Co., Inc. in San Francisco was refusing to sell to certain contractors except upon certain conditions. But affiant admits that Crane Co., Inc. did sustain and back up this affiant in refusing to sell plumbers' materials and supplies as hereinafter set forth.

[fol. 556] Affiant admits that on or about April 28th 1922, and upon one or two occasions thereafter, A Lettich called at the San Francisco office of Crane Co., Inc. and sought to purchase out of the San Francisco stock contained in the bins of the salesrooms and warehouses in San Francisco of Crane Co., Inc. certain small quantities of plumbers' supplies. The amount thereof, as this affiant recalls and believes, in none of said instances exceeded in value twenty dollars.

Affiant alleges that said articles, so sought to be purchased by said A. Lettich, are at that time in the bins and upon the shelves of said Crane Co., Inc. in San Francisco, commingled with other goods of the state.

Affiant alleges that said A. Lettich, at the time he called at the San Francisco salesrooms of said Crane Co., Inc., was accompanied by several persons who all were, as affiant is informed and believes and therefore alleges to be, officers and members of the Plumbers' Union of San Francisco. At the time said A. Lettich called to make said small purchases, there was a plumbers' strike on in San Francisco, which strike was called by the Plumbers' Union of San Francisco to enforce the closed shop in the plumbing industry; that is to say, to compel the dismissal of all non-union plumbers employed by any master plumber. After the strike was declared, approximately ninety per cent of the master plumbers continued to employ union or non-union men without discrimination, but there were some master plumbers, in number about fifteen, who associated themselves with the Plumbers' Union in that strike, and after the strike was called, dismissed their non-union employees and refused to employ under any conditions any non-union employee.

That prior to the general strike of 1921 in San Francisco, the plumbers industry had been burdened with many expensive, unnecessary, uneconomic and harsh regulations by the Plumbers' Union [fol. 557] of San Francisco, which had burdened the plumbing industry in San Francisco to its detriment. Affiant avers that managing the said Crane Co., Inc. for the best interests of Crane Co., Inc. and of the plumbing industry in San Francisco and for the best interests of the city of San Francisco itself, affiant believed it right and proper that the effort to maintain open shop conditions in the plumbing industry in San Francisco should be supported, and that to support the closed union shop strike of the Plumbers' Union would, if said strike were successful, lead to imposing again upon the plumbing industry the rules and restrictions hereinbefore referred to. For these reasons, therefore, affiant as manager of said Crane Co., Inc., refused to furnish or sell said A. Lettich the particular small purchases which said Lettich sought to make. The said Lettich at said time was operating exclusively closed shop union and refused to employ or permit to be employed under him any non-union men.

Said Crane Co. and its predecessors for more than seventy years last past has conducted all its business operations exclusively on the open shop plan in each and all of its factories and distributing points. The said corporation always has believed in the economic and political justice of the open shop plan in all industry and that said open shop plan in all industry was conducive to the best interests of the United States and of the people thereof and of the people of the several states in which it prevailed.

Among the many rules imposed by the Plumbers' Union upon the plumbing industry in San Francisco was the following, to-wit: Crane Co., Inc., in selling pipe for jobs on buildings, at the request of their customers cut and threaded pipe in a place specially main-

tained by them, and operated by them in San Francisco. By cutting pipe in its own storerooms, Crane Co., Inc. saved to the owners of buildings expense, as otherwise the pipe would have to be cut by [fol. 558] hand on the building on which it was to be used, whereas, if it were cut in the salesrooms of Crane Co., Inc., it could be quickly and economically cut by labor saving machinery.

That under the closed shop union conditions which prevailed in San Francisco prior to and up to about May 1st 1921, no master plumber was permitted by the Journeymen Plumbers' Union, nor would any member of the Journeymen Plumbers' Union install in any building whatever any pipe cut and threaded by machinery in the shop of Crane Co., Inc. by its employees unless the master plumber or master steamfitter for whom such pipe was being cut and threaded had a member of the Journeymen Plumbers' Union drawing full union wages sent to the shop of Crane Co., Inc., to stand idly by and watch Crane Co.'s employees cut and thread such pipe, thereby offsetting any saving whatever which might be effected by the use of machinery.

That as a matter of fact, apart from said two or three refusals to purchase the said small order of materials sought to be made by said A. Lettich, said Crane Co., Inc. did sell and deliver to A. Lettich considerable quantities of plumbers' materials. These plumbers' materials had been contracted for between said A. Lettich and Crane Co., Inc. prior to about May 1st 1922, and all of these agreements said Crane Co., Inc. have lived up to and have made delivery on.

Said Crane Co., Inc. in acting as hereinbefore set forth, did not do so in agreement, combination or confederation or conspiracy with any other person or firm whatsoever, but simply in pursuance of what it deemed for the best interests not merely of Crane Co., Inc., but of the plumbing industry of San Francisco. As a matter of fact, since about December 1st 1922, there have been no restrictions of any kind upon the sale of any materials by said Crane Co., Inc. to any person under any conditions in San Francisco, and none are contemplated or planned.

[fol. 559] Affiant further alleges that A. Lettich was the complainant in certain criminal proceedings instituted against Crane Co., Inc. and others, which criminal proceedings were pending in the courts of the State of California from about June 15, 1922, to about May 1st 1923, and notwithstanding the pendency of these criminal proceedings, Crane Co., Inc. continued to deliver plumbers' materials as called for by its agreements with said A. Lettich.

AFFIDAVIT OF FRANCIS J. BAKER ON BEHALF OF DEFENDANTS

Francis J. Baker, being first duly sworn, deposes and says: That he is an officer, to-wit: President, of George H. Tay Co., a corporation, duly organized and existing under the laws of the State of California, and having its offices and principal place of business in the City and County of San Francisco, said State. That said cor-

poration is in the business of selling plumbers' and steamfitters' supplies and materials. It maintains its store and salesrooms in the City and County of San Francisco, and Oakland, Alameda County, from which it sells its supplies and materials. Some of its supplies and materials said corporation itself purchases from Eastern manufacturers in other states than the State of California. Such purchases are brought to said corporation where the shipments are unloaded from cars or ships, placed in the storerooms and salesrooms of said George H. Tay Co., where they reach their final destination and place of rest. They then are commingled with other property within the State of California and with other property of said George H. Tay Co., and are placed in bins and upon shelves and floors and racks to be sold.

Affiant alleges that for some years prior to about June 1st, 1922, said George H. Tay Co., had done very little business with A. Lettich. That some time in May, 1922, the exact date being no longer [fol. 560] known to affiant, said A. Lettich came to George H. Tay Co., for the purpose of making a small purchase of some fittings or valves. The amount and value thereof did not exceed about \$15.00 or \$20.00, as this affiant recalls. Affiant admits that said George H. Tay Co. refused to sell said materials to said A. Lettich. That is the only time that affiant recalls said A. Lettich calling upon said George H. Tay Co., between about June 1st, 1922 and December 1st, 1922.

Affiant alleges that said A. Lettich at the time he called at the store of said defendant George H. Tay Co., was accompanied by several persons who all were, as affiant is informed and believes and therefore alleges to be, officers and mem'ers of the Plumbers' Union of San Francisco. At the time said A. Lettich called to make said small purchases, there was a plumbers' strike on in San Francisco, which strike was called by the Plumbers' Union of San Francisco to enforce the closed shop in the plumbing industry; that is to say, to compel the dismissal of all non-union plumbers employed by any master plumber. After the strike was declared, approximately ninety per cent of the master plumbers continued to employ union or non-union men without discrimination, but there were some master plumbers, in number about fifteen, who associated themselves with the Plumbers' Union in that strike, and after the strike was called dismissed their non-union employees and refused to employ under any conditions any non-union employee.

That prior to the general strike of 1921 in San Francisco, the Plumbers industry had been burdened with many expensive, unnecessary, uneconomic and harsh regulations by the Plumbers' Union of San Francisco, which had burdened the plumbing industry in San Francisco to its detriment.

Affiant alleges that defendant George H. Tay Co., believed it right and proper that the effort to maintain open shop conditions in [fol. 561] the plumbing industry in San Francisco should be supported, and that to support the closed union shop strike of the Plumbers' Union would, if said strike were successful, lead to imposing again upon the plumbing industry the rules and restrictions

hereinbefore referred to. For these reasons therefore, said George H. Tay Co. refused to furnish or sell said A. Lettich the particular small purchase that said Lettich sought to make. The said Lettich at said time was operating exclusively closed shop union and refused to employ or permit to be employed under him any non-union men.

That said George H. Tay Co. in acting as hereinbefore set forth, did not do so in agreement, combination or confederation or conspiracy with any other person or firm whatsoever either interstate or intrastate, but simply in pursuance of what it deemed for the best interests of its own business and of the public generally of San Francisco. Since about the first day of December, 1922, said George H. Tay Co. has not refused to sell to said A. Lettich or any other person having the means to pay for any goods he desired to purchase.

AFFIDAVIT OF ANDREW DALZIEL ON BEHALF OF DEFENDANTS

Andrew Dalziel, being first duly sworn, deposes and says: That he is an officer, to-wit: Secretary and Treasurer of Dalziel Moller Co., a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Francisco, in said State. That said corporation is in the business of manufacturing and selling plumbers' and steamfitters' materials. It maintains its store and salesrooms in the City and County of San Francisco and from said store and salesrooms sells supplies and materials. Some [fol. 562] of said supplies and materials said Dalziel Moller Co. purchases from manufacturers in states other than the State of California and brings them to San Francisco and places said supplies and materials in the storerooms and salesrooms of said Dalziel Moller Co. in San Francisco where they are classified and arranged and put on shelves and bins of said defendant Dalziel Moller Co. Then they reach their final destination and place of rest and are commingled with other property within the State of California and with other property of said Dalziel Moller Co.

That some time in May or June of 1922, A. Lettich sought to purchase from said shelves and bins of said Dalziel Moller Co., a small quantity of plumbers' supplies and materials, but said Dalziel Moller Co. refused to sell the same to said A. Lettich.

Affiant alleges that said A. Lettich at the time he called at the store of said defendant Dalziel Moller Co., was accompanied by several persons who all were, as affiant is informed and believes and therefore alleges to be, officers and members of the Plumbers' Union of San Francisco. At the time said A. Lettich called to make said small purchases, there was a plumbers' strike on in San Francisco, which strike was called by the Plumbers' Union of San Francisco to enforce the closed shop in the plumbing industry; that is to say, to compel the dismissal of all non-union plumbers employed by any master plumber. After the strike was declared, approximately ninety per cent of the master plumbers continued to employ union

or non-union men without discrimination, but there were some master plumbers, in number about fifteen, who associated themselves with the Plumbers' Union in that strike, and after the strike was called, dismissed their non-union employees and refused to employ under any conditions any non-union employee.

That prior to the general strike in 1921 in San Francisco, the [fol. 563] plumbers' industry had been burdened with many expensive, unnecessary, uneconomic and harsh regulations by the Plumbers' Union of San Francisco, which had burdened the plumbing industry in San Francisco to its detriment.

Affiant alleges that defendant Dalziel Moller Co., believed it right and proper that the effort to maintain open shop conditions in the plumbing industry in San Francisco should be supported, and that to support the closed union shop strike of the Plumbers' Union would, if said strike were successful, leave to imposing again upon the plumbing industry the rules and restrictions hereinbefore referred to. For these reasons therefore, said Dalziel Moller Co. refused to furnish or sell said A. Lettich the particular small purchase that said Lettich sought to make. The said Lettich at said time was operating exclusively closed shop union and refused to employ or permit to be employed under him any non-union men.

That said Dalziel Moller Co., in acting as hereinbefore set forth, did not do so in agreement, combination or confederation or conspiracy with any other person or firm whatsoever, but simply in pursuance of what it deemed for the best interests of its own business and of the plumbing business of San Francisco. Since about the first day of December, 1922, said Dalziel Moller Co. has not refused to sell to said A. Lettich or any other person having the means to pay for any goods he desired to purchase.

AFFIDAVIT OF WILLIAM P. GOSS ON BEHALF OF DEFENDANTS

William P. Goss, being first duly sworn, deposes and says: That he is an officer, to-wit: the president of the Master Plumbers' Association of San Francisco, a corporation, duly organized and existing under and pursuant to the laws of the State of California, and having [fol. 564] its principal place of business in the City and County of San Francisco, State of California.

That the objects and purposes of said Master Plumbers' Association of San Francisco are:

(1) To associate together persons who are creditably conducting the business of plumbing in the City and County of San Francisco, said persons having a prominent place of business in the said city and county.

(2) For social intercourse between the members of said organization.

(3) To protect and improve the health of the people of the City and County of San Francisco by and through sanitary plumbing,

and for the advancement of sanitation and the encouragement of sanitary laws.

(4) For the better enforcement of sanitary rules and regulations.

(5) To further the education of its stockholders in sanitary plumbing, heating, gas fitting and drainage, to the end that they may receive reasonable and legitimate pay for work and labor done and materials furnished.

(6) To gather and disseminate information regarding plumbing work.

(7) To adopt reasonable rules and regulations for the conduct of plumbers and for the disciplining of plumbers.

That said corporation was formed during the latter part of the year 1909 and engaged in no business whatsoever, and has nothing to do with the fixing of prices of any commodities or labor, nor the amountso f any bid for work to be done, but is merely an association for the convenience of its members where the general business of plumbing may be regulated efficiently, and economically transacted.

That none of the rules of said organization provide for or permit collusive bidding or fixing, or attempting to fix prices for plumbing [fol. 565] work, or any other kind of work, and that said Master Plumbers' Association of San Francisco does not let or take contracts, and does not buy or sell building material supplies of any kind.

That during the latter part of June, 1921, the Master Plumbers' Association of San Francisco adopted a resolution to support the open shop plan in the plumbing industry in the City and County of San Francisco. Prior to the adoption of the open shop plan in the plumbing industry, the following conditions existed, which conditions were dictated and enforced by the Plumbers' Union:

(1) Apprentice boys were not allowed to measure, cut or thread pipes unless a union journeyman plumber was working with him, although an unskilled laborer can be taught to accurately cut and thread pipes in a very short length of time.

(2) Apprentices had to quit work on all jobs, even as laborers, unless there was a journeyman plumber at work on the job.

(3) Union plumbers were not allowed to start work on any job until the business agent of the Union told the men how the job was to be done.

(4) The business agent of the Union could order as many men on the various jobs as he saw fit without regard to the wishes of the contracting or master plumber.

(5) Laborers or carpenters were not allowed to cut holes in cement walls for pipes, no matter how competent they might be, causing many jobs to be held up unnecessarily and unreasonably at an increased cost for the work.

(6) Laborers, delivery men, or master plumbers could not distribute material from the street to the job.

[fol. 566] (7) No employer was allowed to stay on a job for more than two (2) hours a day, thus allowing the journeymen plumbers to refuse to follow directions of the master plumbers and do the work as they pleased.

(8) No apprentices were allowed in the plumbing trade, except journeymen plumbers' sons, from the year 1905 to March, 1920, even master plumbers' sons not being allowed to learn the trade from 1907 to 1921. The result of this rule was that not more than fifteen (15) to twenty-five (25) apprentices learned the trade in the City and County of San Francisco during this fourteen-year period.

(9) The master plumbers were not permitted by the union to have any part in the control of the apprentice situation from 1906 to 1915, with the result that practically no boys were permitted to learn the trade.

(10) The Union in 1920 permitted only twenty (20) boys to learn the trade.

(11) No matter how small the job or how short a time a journeyman plumber worked on a job, the master plumber had to pay for half a day.

(12) No plumber was allowed to bend a pipe to adjust it into a fitting for a small offset, the Union requiring that fittings be used for the smallest offset, which caused more work for the men, increased the cost of the work, and many times resulted in creating dangerous angles in pipe that would clog readily.

(13) The Union required that all pipe be stamped with the union label, which added to the cost of material.

(14) Whenever pipe had to be cut at a pipe shop, the Union required that a journeyman plumber accompany the pipe to the shop and wait while it was being cut and threaded by a regular competent [fol. 567] man in the pipe shop. This sometimes meant that the journeyman plumber had to spend many idle days while pipe was being cut. In one case, a man had to be sent from Vallejo to San Francisco, his fare and wages paid for a period of one week, while he was waiting for a job of this kind to be done.

(15) Practical sewer men were not allowed to lay iron stone pipe within the property line, but journeymen plumbers had to be hired to lay this pipe inside this property line, which greatly increased the cost of large jobs. Thus, at the Panama-Pacific International Exposition in 1915, experienced competent sewer men were not allowed to lay iron stone pipe in the Exposition ground, no matter how far it had to be laid.

(16) No cast iron pipes or fittings were allowed to be caulked in the shops.

(17) Union men could not work overtime on Saturday without permission from the Union, no matter how serious the emergency was.

(18) Detailed reports had to be made each day by all union journeymen on cards furnished by the Union. The men had to show how many fixtures were set each day and the amount of all kinds of work done. Men who did more than the standard set by the Union were called before the Union Board and disciplined for their efficiency.

(19) Violation of Union rules resulted in fines imposed upon the men up to two hundred dollars, and men were often taken from shops and given clearance cards and sent out of town as punishment.

That since the adoption of the open shop plan, which has the support of the Master Plumbers' Association, competent men are allowed [fol. 568] to measure and thread pipes, even though they are not journeymen plumbers, as this work does not require great skill but a very small amount of practice. Laborers and apprentices are allowed to cut holes in cement walls and competent sewer men are allowed to lay iron stone pipe in the ground. Laborers, delivery men and master plumbers are now allowed to distribute material from the street to the job, and the employer is allowed to direct the work and stay on the job as many hours a day as is necessary to see that the work is properly and efficiently done. Instead of from 13 to 25 boys being apprenticed and learning the trade, there are now approximately 361 boys in training. Production is no longer curtailed by the Business Agent of the Union and each man is allowed to turn out a normal full day's work, even though it happens to be more than the limit set by the Union under the closed shop conditions. Pipe can now be bent and adjusted into fittings for small offsets, thereby saving a vast amount of expense and making a more workmanlike job with less danger of having the pipe clogged. The expense of stamping pipe with the Union label is now done away with, and at the present time a journeyman plumber does not have to accompany the pipe to the shop where it is being cut and threaded by regular competent mechanics in the shop. Iron pipe and fittings can now be caulked in the shop, thus saving time and expense. No longer are men fined by the Union for over-production or infraction of Union rules, or given clearance cards and sent out of town as punishment for disobeying said rules.

That all of the onerous, injurious rules prescribed by the Plumbers' Union have been done away with since the adoption of the open shop plan and production has increased, while the expense of the same has decreased to a marked degree.

That the Master Plumbers' Association of San Francisco has not [fol. 569] at any time entered into any agreement, combination, confederation or conspiracy with any other person or firm whatso-

ever but has simply maintained its organization for what it deemed the best interests of the business of the Master plumbers of San Francisco who compose its membership.

That affiant has been in the plumbing business for years, formerly as a journeyman plumber, but for more than — years as a master plumber, during which time he has contracted for and completed numerous jobs. That during all the time, affiant has been a master plumber, he has hired men to work for him, bought materials, and supervised the installation of all clases of plumbing work.

AFFIDAVIT OF C. J. REDDY ON BEHALF OF DEFENDANTS

C. J. Reddy, being first duly sworn, deposes and says: That he is an officer, to-wit: the Secretary and Treasurer of the Grinnell Co. of the Pacific, a corporation, duly organized and existing under and pursuant to the laws of the State of California, and having its principal place of business in the City and County of San Francisco, State of California. That said corporation is in the business of selling Grinnell Automatic Sprinkler installations and pipe valves and fittings. That it maintains its stores and salesrooms in the City and County of San Francisco, California, Los Angeles, California and Seattle, Washington, from which it sells supplies and materials.

Affiant alleges that at times said Grinnell Co. of the Pacific has refused to sell supplies and materials to certain persons, whom affiant is informed and believe and therefore alleges, were officers or members of the Plumbers' Union of San Francisco or are connected therewith. That at such time or times when said Grinnell Co. of the Pacific refused to make sales, there was a plumbers' strike [fol. 570] on in San Francisco, which strike was called by the Plumbers' Union of San Francisco to enforce the closed shop plan in the plumbing industry; that is to say, to compel the dismissal of all non-union members employed by any master plumber. After the strike was declared, approximately ninety per cent of the master plumbers continued to employ union or non-union men without discrimination, but there were master plumbers, in number about fifteen, who associated themselves with the Plumbers' Union of San Francisco in that strike and after the strike was called dismissed their non-union employees and refused to employ under any condition non-union employees.

Affiant alleges that Grinnell Co. of the Pacific believed it right and proper that the effort to maintain the open shop conditions in the plumbing industry in San Francisco should be supported and that to support the closed union shop strike of the Plumbers' Union would, if said strike was successful, lead to imposing again upon the plumbing industry the rules and restrictions hereinbefore referred to. For these reasons therefore, at times the Grinnell Co. of the Pacific refused to sell material to certain persons.

That the defendant Grinnell Co. of the Pacific, in acting as hereinbefore set forth, did not do so in agreement, combination or confederation or conspiracy with any other person or firm whatsoever, either interstate or intrastate, but simply in pursuance of what

it deemed for the best interests of its own business and of the public generally of San Francisco.

Affiant alleges that the Grinnell Co. Inc., a Rhode Island corporation, owns none of the stock of the Grinnell Co. of the Pacific, and does not influence, dominate or control the policies of the Grinnell Co. of the Pacific in any manner whatsoever, neither does the Grinnell Co. Inc., a Rhode Island corporation, have any-[fol. 571] thing to do with the election of the Board of Directors of the Grinnell Co. of the Pacific, nor does it influence, dominate or control either the board of directors, stockholders or employees of the Grinnell Co. of the Pacific.

Affiant further alleges that the Grinnell Co. of the Pacific is not the local agent or representative of the Grinnell Co. Inc., the Rhode Island corporation; neither does it deal in or do business with supplies or materials furnished and authorized to it by said Grinnell Co. Inc.

AFFIDAVIT OF W. H. GEORGE ON BEHALF OF DEFENDANTS

W. H. George, being duly sworn, deposes and says: I have read the affidavit of Thomas F. Rice concerning his interview with C. F. Collonan of the Collonan Electric Co. It is true that said Collonan has been cited to appear before the Grievance Committee of the Builders' Exchange of San Francisco on an alleged violation of one of the rules of the Builders' Exchange in this, to-wit:

The said Collonan Electric Co. was and during all times mentioned in said affidavit now is a member of the Builders' Exchange of San Francisco. That said Collonan Electric Co. had agreed in writing to do the job referred to in said affidavit on the open shop plan. That thereafter it was discovered that one Charles Gomez, an employee of one Wunderlich, was and is doing the plumbing work on the job referred to. That said Wunderlich is the business agent and manager of a co-operative plumbing contracting business being operated by the Plumbers' Union of San Francisco. That said Collonan Electric Co. claims that the person Black, referred to in said affidavit, put in two different bids for the work; one for Sixteen hundred and fifty (\$1,650.) Dollars, and another one for Two thousand and eighty-five (\$2,085) Dollars. [fol. 572] That said Black denies that he put in the bid for the work for Sixteen hundred and fifty (\$1,650) Dollars. That said Black is also a member of the Builders' Exchange of San Francisco.

That one of the rules and regulations of said Builders' Exchange is that a member making or asking for bids to or from another member of the Builders' Exchange shall be bound by his said written bid. That said Collonan Electric Co. claims that said Black in violation of said rules was refused to do said work for said sum of Sixteen hundred fifty (\$1,650) Dollars.

Affiant alleges that said Collonan Electric Co. has never been denied any materials or any permit for materials at any time. In particular, said Collonan Electric Co. has never been denied any materials or any permit even since the citation to appear before said

Grievance Committee, and no materials have ever been withheld or denied said Collonan Electric Co. of any kind or character.

AFFIDAVIT OF ATHOLL McBEAN ON BEHALF OF DEFENDANTS

Atholl McBean, being duly sworn, deposes and says: That he has read the affidavit of Willis Polk, sworn to on the 12th day of June, 1923, on file in the above-entitled proceeding.

That it is untrue that on or about any day of May, 1921, affiant had any conversation with Willis Polk in which he explained to the said Willis Polk the proposed working plan of the Industrial Association of San Francisco and the Builders' Exchange of San Francisco. The Industrial Association of San Francisco was not formed at that time nor for a number of months thereafter.

It is untrue that in the course of any conversation at any time this affiant explained to said Willis Polk that he, the said affiant, would never again be able to get competition as he did in the case of the [fol. 573] terra cotta for the Hobart Building; or that he explained to the said Willis Polk that the National Terra Cotta Society had entered into an agreement in the nature of a "gentleman's agreement", whereby no member would invade the self-outlined territory assigned to each member.

It is untrue that this affiant ever explained or said to said Willis Polk that said Willis Polk could not hope to secure bids in this territory from any members of the National Terra Cotta Association.

It is untrue that this affiant ever said to said Willis Polk; "Willis, you understand that in the case of the Hobart Building, the Atlantic Terra Cotta Company of New York underbid us and that you offered us their price.", or anything in substance at all similar thereto. It is likewise untrue that said Willis Polk at that time said to affiant, "Why, Atholl, isn't what you have just told me about the National Terra Cotta Society nothing more nor less than a combination in restraint of trade?", or anything similar in substance thereto. It is likewise untrue that this affiant at that time said, "No, it is an association of the highest standing leading firms in our business in the entire country, organized for the sole purpose of eliminating from our business the peddling of bids.", or anything in substance similar thereto. It is likewise untrue that said Willis Polk said, "Well, Mr. McBean, be that as it may, does not such a combination open the door for the fixing of prices?", or anything in substance similar thereto.

This affiant has no recollection of ever having any conversation on any train between San Francisco and San Mateo with the said Willis Polk at or about May, 1921.

[fol. 574]

EXHIBIT IN EVIDENCE

Stipulation

It is hereby stipulated by and between the parties to the above entitled action that the annexed document entitled, "A Summarized

Statement Covering the Creation and Activities of the Board of Arbitration for the Building Industry in the Year 1921," signed by Most Reverend Edward J. Hanna, Catholic Archbishop, Max C. Sloss, and George L. Bell, may be deemed accepted and filed as the sworn statement of said three signatories and received as their respective affidavits, with the full force and effect of other affidavits introduced by the parties hereto under the stipulation hereinbefore filed.

A Summarized Statement Covering the Creation and Activities of the Board of Arbitration for the Building Industry in the Year 1921.

I.

Appointment of the Board

In the latter part of December, 1920, Mr. Atholl McBean, the then President of the San Francisco Chamber of Commerce, asked the Most Reverend Edward J. Hanna, Judge Max C. Sloss, and Mr. George L. Bell to serve as a Board of Arbitration to settle certain disputes or controversies concerning wages that had arisen between building contractors and their organized employees in several trades. It was stated at the time that there had been strikes of a few days' duration in some of these trades in the Summer and early Fall of 1920, and that the men had finally returned to work with the understanding that the matters at issue would be submitted to the arbitration of an impartial board. The contractors involved, through their organization known as "The Builders' Exchange," and the organized employees, through their central organization known as "The Building Trades Council," had requested the San Francisco Chamber of [fol. 575] Commerce to secure the service of three impartial arbitrators who would be acceptable to the two organizations involved. With this understanding of the situation the three persons named above agreed to serve as arbitrators.

At a meeting of the representatives of the Building Trades Council, the Builders' Exchange, and the San Francisco Chamber of Commerce, with the three arbitrators, about January 10th, 1921, there was a long discussion concerning the powers of the Board of Arbitration, the methods of procedure, and the subject matter to be considered by the Board. At this conference the representatives of the Building Trades Council earnestly urged that the Board be created as a permanent or continuing institution to arbitrate not only the disputes then existing, but any and all disputes or disagreements that might arise between the employers and employees in the building industry at any time. The representatives of the Builders' Exchange accepted this proposal, and the three arbitrators consented to serve on condition that a written arbitration agreement be drawn up, clearly stating the exact powers and jurisdiction of the Board, and binding the signatory parties to abide by the decisions of the Board made under the terms of such agreement. The meeting was adjourned with the understanding that such an arbitration agreement should be prepared.

II

Arbitration Agreement

On January 18, 1921, the Board met with the representatives of the Builders' Exchange and the Building Trades Council in a room at the San Francisco City Hall, and the following arbitration agreement was signed in the presence of the full Board by Mr. P. H. McCarthy, President of the Building Trades Council, and Mr. C. W. Gompertz, President of the Builders' Exchange.

[fol. 576] Arbitration Agreement, Builders' Exchange and Building Trade Council.

1. In the matter of arbitration between the Builders' Exchange and the Building Trades Council, we hereby accept the following three arbitrators, to-wit: Archbishop E. J. Hanna, Max C. Sloss, ex-Associate Justice of the Supreme Court of California, and George L. Bell, Consultant in Industrial Relations and Management.

2. It is understood that all three arbitrators are to be deemed impartial arbitrators of all controversies, and under no circumstances is any one of them to be considered a representative on the Board of Arbitration of either of the contending parties.

3. It is agreed that this board shall sit as a continuing Board of Arbitration to which shall be submitted all disputes as to hours, wages, and working conditions in building trades where there are no disputes now, as well as in those where there are, when and as such disputes arise between the signatory parties and that the decisions of the Board shall be accepted as final and carried out by all parties. This step is taken in order to provide a permanent method of settling amicably and in a reasonable manner labor disputes in this City affecting the building trades, and with the hope that building operations henceforth may be put on a certain and stable basis—a result which will be of advantage to the workers, to the employers, and to the public.

4. It is also agreed that the Board of Arbitration may go into all questions concerning the general building situation and call upon the signatory parties for information and copies of contracts or agreements concerning any phases which the Board desires to investigate.

5. It is further agreed that the Board of Arbitration may incur such expenses as it deems necessary for the employment of investigators and clerical assistance; and that the entire expense incurred by the Board will be shared equally by the signatory parties.

6. It is understood that all hearings of the Board of Arbitration are to be conducted as public sessions, save and except such special hearings as in the judgment of the Board should be held in executive session.

7. It is understood that the trades in which there are now disputes concerning hours, wages, and working conditions, which disputes will be immediately submitted to the Board are as follows:

Painters; Glass Workers; Varnishers and Polishers; Cement Finishers; Cement Laborers; Hod Carriers, tending plasterers; Marble Rubbers and Sawyers; Marble Finishers and Polishers; Marble Masons; Marble Masons' Helpers; Hoisting and Portable Engineers; Roofers; Elevator Constructors; Elevator Constructors' Helpers; Reinforced Iron Workers; Team and Auto Truck Drivers; Plasterers.

Building Trades Council, by P. H. McCarthy. January [fol. 577] 18th 1921. Builders' Exchange by Chas. W. Gompertz. January 18th 1921.

At the same time, there was some discussion on the part of the representatives of the Builders' Exchange concerning certain alleged rules and practices of various building trades unions which they deemed injurious to the interests of builders and building owners. Representatives of the unions stated that they could not, principally because of their international union rules, agree to submit all of these questions to the final decision of the Board of Arbitration, but that certain of the issues they were willing to submit either for an expression of opinion, or a binding decision on the part of the Board. Accordingly, the following memorandum was drawn up, not as part of the formal arbitration agreement, but "purely for the guidance of the Board."

"In the matter of the arbitration between the Builders' Exchange and the Building Trades Council, purely for the guidance of the Board, it is understood that the following abstract or general matters will be submitted to the Board for opinion or decision as indicated in each instance."

I

"On the following matters it is understood that either or both parties may ask the Board to express its opinion, but that said opinion will not be regarded as a binding decision:"

1. "Number of apprentices to be allowed to each shop, or number of apprentices to be allowed to a given number of journeymen, and length of time which apprentices must serve before becoming journeymen."

2. "Fee that unions under the jurisdiction of the San Francisco Building Trades Council or the Internationals engaged in the erection of buildings in the State of California shall charge applicants for membership."

3. "Eligibility of applicants for membership in the unions mentioned above, when their employers certify that they are satisfactory workmen, and in the case of apprentices when they have completed their apprenticeship."

II

"On the following matter it is understood that the Board itself will determine whether or not it shall take the question up for consideration and the expression of an opinion."

1. "The abolishing of the position of shop stewards."

[fol. 578]

III

"On the following general subjects both parties are now in agreement, but that if a dispute arises the Board of Arbitration may render not only an opinion but a binding decision:"

1. "Right of employers to hire men direct and not through the business agents of the unions."

2. "Right of employers, when union men are not available, to hire non-union men, with the understanding that they shall join the union."

3. "Employers to have the right to discharge unsatisfactory workmen."

4. "The erection of buildings to be governed only by the plans and specifications of the architect, the laws of the State of California, and the local building ordinances wherever there are such."

5. "That neither employers, organizations nor unions shall put any restriction upon output, nor any limits upon the amount of work which a workman, or workmen, shall turn out during the work day."

6. "An established minimum wage scale per hour."

7. "An additional amount to be paid per day to foremen, more than to journeymen, provided that such minimum amount shall be one dollar per day."

In accordance with the arbitration agreement of January 18th, the Board of Arbitration held its first public hearing in a room at the San Francisco City Hall, on Friday, January 21, 1921. Mr. Frank MacDonald, an official of the Building Trades Council of San Francisco, appeared as representative of that organization, and of the individual unions involved to present their contentions in the disputes in the trades enumerated in paragraph seven of the arbitration agreement of January 18, 1921. Mr. John S. Partridge appeared as the representative or attorney for the Builders' Exchange, and as representing the employers in the crafts enumerated in paragraph seven. The Board of Arbitration employed an official shorthand reporter to report the entire proceedings at all the various hearings, and the transcript of the proceedings on January 21st contains the following passages relative to a question raised by Ex-Justice Sloss concerning the power of the representatives of the organizations [fol. 579] involved to enter into binding agreements:

"Mr. Sloss: I will interrupt you a minute. We were rather struck with what you were reading here about an association entering into an agreement, and it turned out afterwards that it had no authority to bind its constituents, and the Archbishop suggests that we may find that same situation confronting us here, that upon one side of the other it may appear that there is a lack of authority to bind the people who are represented, either the Building Trades Council, or the Builders' Exchange, and we thought it might be appropriate to ask a question of both sides at this time, as to whether that authority exists."

"Mr. MacDonald: I can say, as far as counsel is concerned, we are here with authority to represent each and every one of the seventeen crafts whose cases we have agreed to submit to you as arbitrators. As far as the Builders' Exchange is concerned——"

"Mr. Bell: Just a moment on that. Have resolutions been passed by those respective crafts and organizations?"

"Mr. MacDonald: A resolution has been passed—or a motion rather—by the parent body, the Building Trades Council of San Francisco, which has authority as a governing body, to adopt such resolution."

"Mr. Bell: And which included representatives from these seventeen trades?"

"Mr. MacDonald: Yes."

"Mr. Partridge: Mr. Chairman and gentlemen: So far as the Builders' Exchange is concerned, the gentleman who signed the agreement the other day, with his two associates, have the fullest and most complete authority to represent the Builders' Exchange and the employers, and a resolution has been duly passed to that effect."

"Mr. Bell: By the representatives of these seventeen trades or crafts?"

"Mr. Partridge: They are all represented in the Building Trades Council. I think there is no question of that. Yes."

"Archbishop Hanna: So that all the workmen who happened to be working under these conditions belong to some employer who is a member of the Builders' Exchange?"

"Mr. Partridge: I think that is true, I think there are none out at this time—unless the plumbers—and they are not in the seventeen crafts."

"Mr. Bell: I suppose there are some independent contractors who may not be members of the Association."

"Mr. Partridge: That may be, Mr. Bell, but I know of my own knowledge to this extent, at least: that the great majority of the employers concerned in this arbitration are represented, and gladly represented, by the signatories to the agreement."

[fol. 580] "Archbishop Hanna: That is all."

"Mr. Sloss: Go on, Mr. MacDonald."

"Mr. MacDonald: I fear that the statement just made by Mr. Partridge needs explanation. The Builders' Exchange represents a minority of employers in the building business in San Francisco. We will later take up the case of the Painters, and therein we will show that there were, at the time the controversy started, about 78

contracting painters in the Builders' Exchange. We have since been told that there are now 83 or 85 members. We will present evidence to show that there are 235 independent painting contractors who are not members of the Builders' Exchange, and who are not governed, nor controlled by it in any manner, shape or form."

"We will show, with regard to other crafts, as they come up, that fully one-half of the men are employed by independent contractors who are not members of the Builders Exchange, who have nothing in common with it, and who have refused in many instances to join that organization, notwithstanding the fact that efforts were made to try and force them into the Builders' Exchange. So that Mr. Partridge is mistaken when he says that the Builders' Exchange is representing the Builders' Exchange and the employers."

"Mr. Partridge: Well, I am informed by Mr. Compertz that so far as the painters are concerned, about ninety percent of the work in San Francisco is done by those who are members of the Builders' Exchange. However that may be, I have known that at least a very large number of the employers of labor in the building trades are members of the Builders' Exchange. In so far as they are members, the signatories to the agreement represent them. Now, if there are outsiders, that is, employers of labor who do not belong to the Builders' Exchange, of course they are not bound. I assume, however, from the personnel of this Board of Arbitration and from what I expect to be the complete showing that will be made here, and from the spirit with which we have all entered into this matter, which is one of conciliation and settlement, that any wages, hours and working conditions, or what not, that are determined by you three gentlemen as binding upon the Building Trades Council and upon those employers who are represented here, will at least have a compelling moral effect upon those who are on the outside."

"At least, it is a long step, in any event, toward a settlement of these questions."

The arbitration agreement of January 18th and the above statements of the representatives of the parties at the first hearing, convinced the Board that the question of its jurisdiction was clear, and it proceeded to continue exhaustive public hearings, and employed the services of a field investigator in accordance with the authority given in paragraph five of the arbitration agreement, to secure additional data and information.

[fol. 581]

III

Public Hearings and Evidence Submitted to the Board

The Board held several public hearings at which representatives of the two parties presented evidence through witnesses who were either actual employers or employees in the crafts involved. General data were also submitted together with arguments. These public hearings were held in the San Francisco City Hall on Friday, January 21, 1921, Monday, January 24, 1921, Tuesday, January 25,

1921, Thursday, January 27, 1921, Monday, January 31, 1921, Thursday, February 2, 1921, and Wednesday, February 9, 1921.

Most of the testimony and argument at these hearings had to do with the case of the painters, which presented the most complicated and involved issues. The Board, foreseeing that many weeks or months would be consumed by following this procedure, suggested that a decision should be reached as soon as possible on the matter of wages, leaving for later consideration by the Board any other issues. It was proposed that, if it were agreeable to the parties, that the evidence and arguments in the remaining crafts enumerated in paragraph seven of the arbitration agreement be submitted in writing, and that the Board should then arrive at and announce at least a temporary decision on the matter of wages. This proposal was accepted by the representatives of both parties.

Accordingly, about the end of February, 1921, the Building Trades Council, as proponents, filed very comprehensive written statements of evidence and arguments supporting the contention of the unions in fifteen of the seventeen crafts enumerated in paragraph seven of the arbitration agreement, that they were entitled to wage increases ranging from 50¢ a day to \$1.50 per day; which increases had been sought by the men involved in the Summer and Fall of 1920. Early in March the Builders' Exchange filed lengthy answers [fol. 582] to the opening statements of the Building Trades Council, in each case not only arguing against the increase requested, by the representatives of the employees, but also asking the Board to make reductions ranging from 50¢ to \$1.00 in the then existing wage scales in those crafts. In addition to these answers, the Builders' Exchange, as proponents in the remaining two crafts of the seventeen enumerated in the arbitration agreement, viz: plasterers and plasterers' hodcarriers, urged that the wages be reduced \$1.00 per day in each of these crafts. Within a few days the Building Trades Council filed a written rejoinder to each of the separate answers of the Builders' Exchange, again forcibly urging increases rather than decreases in wages, but in no instance, or in any manner, contesting the right of the Builders' Exchange to request a reduction from the then existing wage scale, nor questioning the jurisdiction of the Board to consider or grant any such requested reductions.

In addition to the separate statements and arguments filed in each of the cases as referred to above, each party submitted carefully prepared printed arguments covering the general principles involved in the various issues, and stressing principally data, statistics, and conclusions with regard to the cost of living. The concluding paragraph of this general printed argument of Mr. John S. Partridge, the attorney for the Builders' Exchange was as follows:

"We are asking, therefore, that wages be reduced in accordance with our answers in the various crafts. But in addition to that we are asking that all wages in the building trades be reduced and graded so that they will bear some reasonable relation to the amount and character of the service rendered—to the end that the public have some relief from the present intolerable building costs, and that

we do our part toward the restoration of the balance of industry, and the return of prosperity."

In the arguments submitted by the Building Trades Council it [fol. 583] was consistently maintained that a consideration of living costs and comparative wages in other cities led to the inevitable conclusion that there should be increases in the existing wages rather than any decreases, but no contention was made as to the authority of the Board to consider the request of the Builders' Exchange for a reduction in the existing wages of the seventeen crafts enumerated in the arbitration agreement, or the claim for a reduction in the wages in all the additional building trades crafts.

IV

Decisions and Awards of the Board

The Board of Arbitration, both as individuals and collectively, devoted a great amount of time to the study of the evidence and arguments presented in the public hearings, and the data contained in the written statements; and finally on March 31st, handed to the representatives of the contending parties the following written temporary decision or award.

"The undersigned Board of Arbitration, created by agreement of the Builders' Exchange and the Building Trades Council, herewith announces its temporary awards in the trades in which issues as to wages were submitted for decision. These awards are to continue for a period of six months commencing on April 11th."

"Hearings were begun the latter part of January for the consideration of evidence and arguments not only with reference to wages but concerning working conditions and rules, standards of work, and other general phases of the building industry. The Board found that both parties had such a mass of material to submit in connection with each trade that a decision could not be reached for many months. The Board felt it could not delay a decision in the matter of wages while it went into all the other intricate subjects because wages have been the subject of controversy since last July and they are naturally of most immediate and vital concern to both parties. Therefore, after the full presentation of the evidence in the rather involved issues in the Painters' trade, the Board suspended the hearings and had the parties submit in writing their contentions in the other trades as to the wage issues only. The evidence was not completely turned in until March 28, 1921.

"With wages fixed for a definite period this Board, which is a continuing one, will make a thorough study of general conditions in the industry. The Board desires, with the continued cooperation of both parties and the public, to develop some scientific studies of operating methods and practices so that there may be made available more facts and clearer principles for the fixing of wages and working conditions and for the constructive development of the industry. To

[fol. 584] the public at large, as well as to the industry itself such matters are of more fundamental importance than the establishment of these temporary wages."

"In making these temporary awards the Board has had to do its best with the facts at its command and the time at its disposal. The parties to the controversy have presented requests for flat increases or decreases respectively, without presenting detailed or specific reasons to justify such requests."

"On the question of skill, as an element to be considered in determining wages, the evidence so far offered is inconclusive. In fact, neither side furnished any definite principle or method for applying this important factor in fixing a wage scale. The important fact in this regard is that the wage scales for these trades remained in effect from 1907 to 1917 with substantially the same differentials between crafts. It is entirely reasonable and fair, therefore, to hold largely to these differentials that were established and maintained by mutual consent for some ten years until a better basis of adjustment is determined through more adequate investigation.

"Voluminous arguments have been presented concerning budgets, standards and cost of living. The field of inquiry thus presented calls for more extended consideration than has been possible up to this time. For present purposes the Board has limited itself to the most recent available Government figures showing the increase in cost of living since 1914. This increase has been the principal factor in fixing these temporary awards. In an agreement between the Building Trades Council and the Building Industries Association (the predecessor of the Builders Exchange) made in February 1920, both parties accepted this principle of changing wages from time to time with the changes in the cost of living.

"The U. S. Bureau of Labor Statistics in its latest published report announces that the cost of living in San Francisco has increased 85.1% from 1914 to January 1, 1921. In 1914 the lowest wage paid to any of the trades under consideration was \$3.00 per day. By applying the 85.1% increase in costs, we find that the wage of corresponding purchase power is \$5.55. In this particular trade the wage increase to date has been 100%, therefore a reduction of 7½% of the present wage is necessary to equalize the wage with the cost of living. The workers in this trade are today receiving \$6.00 per day. The reduction of 7½% involves a reduction of 45¢ per day."

"The Board has applied this 7½% reduction, determined as outlined above in the lowest paid or marginal craft, to the other trades here involved. If the 85.1% increase over 1914 were applied in all the trades the differentials between the crafts would be entirely upset, inasmuch as the increases mutually agreed upon by the parties since 1914 have been flat increases rather than percentage increases, and have not consistently followed the same principle of increase as has the marginal craft. As stated above the facts concerning relative skill and other important factors are not at hand

to enable the Board to change appreciably these differentials to any greater extent than by this general $7\frac{1}{2}\%$ reduction."

[fol. 585] "It may be argued that the cost of living has decreased further since January 1st and that, it is unfair, therefore, to give the workers the full benefit of the latest published findings of the U. S. Department of Labor—which unfortunately are published three or more months late. In taking the ratio of increase up to January 1st, 1921 as the basis for its action, the Board has been guided by the following considerations:"

1. "Wages for the next six months cannot be predicated upon estimates or rumors of present fluctuations or upon prophecies of future fluctuations in the cost of living."

2. "It is desired to establish acceptance of these regularly published Government findings as a permanent principle in the industry. Even though a reduction from this published index figure would benefit the workers, it is obvious that in a period of rapid increase in the cost of living, the use of this figure would temporarily work to the advantage of the employer. It is only by the adoption of the periodic findings of such a recognized authority as the U. S. Department of Labor that the advantages in one period can be made to balance the disadvantages in another period."

3. "Cost of living figures in connection with wages are of relative value only and must be considered in connection with the last wage increases or decreases. Wages in the trades in question have not been changed for approximately a year. Consequently wages did not follow the cost of living figures up to the peak reached in June, 1920, and it obviously would not be equitable to apply arbitrarily the percentage of decline (reported by the Government to be 10.9%) from that peak point to January 1st, 1921."

The Painters

"The case of the painters is complicated by a controversy over an agreement claimed to have been made in July, 1920, between the Master Painters Association and the District Council of Painters. The Board finds that although the employing painters believed that any agreement reached was subject to the confirmation of the Builders' Exchange, they did fail in making this qualification entirely clear to the union representatives. Furthermore their later actions gave the men good reason to believe that this agreement for a 50 cent wage increase was regarded as binding."

"In collective bargaining there is no principle more fundamental to justice and the public welfare than the integrity of contracts. The Board believes that no charge of bad faith can be upheld. At the same time the men relied, with good reason upon what they thought was a valid agreement for an increase. Accordingly in applying the $7\frac{1}{2}\%$ wage reduction in the painters trade, the Board used the \$9.00 a day rate to which they were entitled under the terms of the agreement, rather than the \$8.50 per day which they are now receiving.

In this way the painters are fully compensated for the loss incurred in not receiving the 50 cent wage increase during the six month period from July 28, 1920 to January 28, 1920, covered by the disputed agreement."

[fol. 586] The Plasterers and Hodcarriers (Tending Plasterers)

"The evidence in the plasterers case was not completely submitted to the Board until March 24, 1921. The dispute involves alleged breach of faith by both parties. There are also certain grave questions of trade practice which the Board deems too important to the public welfare to decide without further testimony presented at open hearings."

"The plasterers, therefore, are not included in this temporary award. Their present wage shall continue in effect during such time as is required for a full consideration and hearing of the case."

"Likewise full evidence concerning hodcarriers (tending plasterers) has not been introduced and their present wages shall stand pending further hearings:"

"The new wages to go into effect on April 11th are shown in the following table:"

Table of Wage Scales in 16 Building Trades

Craft	1907 to 1914 wage	Present wage	Wage award of arbitra- tion board
Roofers	\$6.00	\$9.00	\$8.35
Marble Polishers	3.50	6.50	6.00
Bed Rubbers	4.00	7.00	6.50
Cement Laborers	4.00	7.50	7.05
Glass Workers	4.50	8.50	7.85
Truck Drivers	4.00	7.00	6.50
Team Drivers	3.00	6.00	5.55
Varnishers & Polishers:			
(Inside)	4.00	7.50	6.95
(Outside)	5.00	8.50	7.85
Marble Cutters	4.50	7.50	6.95
Marble Setters	5.00	8.00	7.40
Marble Helpers	3.00	6.00	5.55
Elevator Constructors	5.00	8.50	7.85
Elevator Helpers	3.00	6.00	5.55
Cement Finishers	6.00	9.00	8.35
Painters	4.50	9.00	8.35
Iron Workers	5.00	8.50	7.85
Hoisting & Portable Engineers	6.00	9.00	8.35

[fol. 587] The Board confirms the agreement of July 24, 1920, the terms of which were never made effective and therefore figures its award from \$9.00 instead of the \$8.50 wage now actually being paid.

In setting the award the actual amount determined by applying 7½% reduction to the present wage was brought to the even 5 cents nearest it.

When copies of the above temporary award were handed to the representatives of the Building Trades Council, they expressed disappointment that the Board had decided on a reduction for this six months period. Within a day or two after the issuance of this temporary award, however, the representatives of the Building Trades Council called upon the one member of the Board who was then in San Francisco and protested the temporary award of the Board on the ground that it had no jurisdiction to make any decreases in the then existing wage scale, except in the two cases of the plasterers and plasterers' hodcarriers where the Builders' Exchange had appeared as the original proponents of a decrease in the existing scales. It was contended that the jurisdiction of the Board was limited to deciding either in favor of the continuance of the then existing wage scales in the remaining fifteen crafts, or granting all or some part of the increases requested by the representatives of the Building Trades Council for those crafts. In view of the protest as to jurisdiction the Board, on or about April 6, 1921, issued the following statement to the contending parties and to the public:

"On Thursday, March 31, the Board of Arbitration, created by agreement of the Building Trades Council and the Builders' Exchange, announced a temporary award in the seventeen trades, in which issues as to wages had been submitted for decision. This award was to go into effect on April 11th. However, in the absence from the city of two of the members of the Board, certain questions have arisen which have made it seem advisable to the Board to suspend the effective date of the award until such time as a full meeting might be held. It is expected that such meeting can be held shortly after April 20th."

Between April 6th and April 29th, representatives of the two parties held several discussions concerning the matter of jurisdiction with the two members of the Board who were in the City, and [fol. 588] finally the entire Board held a formal hearing lasting several hours, to which those representatives of the Building Trades Council and the Builders' Exchange who had signed the arbitration agreement, and one or two other representatives from each side, presented lengthy arguments. The Board itself held several executive sessions at which the whole issue was given the most thoughtful consideration, and finally on April 29th, 1921, issued the following award and decision to the contending parties and to the general public:

"Immediately after the announcement of the temporary wage award of March 31st, 1921, the Building Trades Arbitration Board was petitioned by the Building Trades Council for a reconsideration of its decision on the grounds that the Board had no jurisdiction to award a decrease of wages in any of the said crafts, and that the

Council had not had time to answer the reply of the Builders' Exchange on the matter of Cost of Living.

"After a full consideration and hearing of this petition, the members of the Board of Arbitration are unanimously of the opinion that the award should not be withdrawn or reconsidered."

"The Arbitration Agreement signed by representatives of both parties under date of January 18th, 1921, submits to the decision of the Board in the broadest terms "all disputes as to hours, wages and working conditions in building trades where there are no disputes now, as well as in those where there are, when and as such disputes arise between the signatory parties, and that the decision of the Board shall be accepted as final and carried out by all parties." The Agreement also authorizes the Board to "go into all questions concerning the general building situation."

"It is true that the controversies in fifteen of these particular crafts were precipitated by demands of the Unions for increases last July, and in the remaining two crafts by demands of contractors in September for decreases. It is probably also true that in the preliminary meetings and discussions looking to arbitration, both parties had in mind, as the predominant issue, these respective increases and decreases. However, the Board was not organized until about the middle of January, 1921, and in the meanwhile conditions had changed greatly, and the signed agreement under which the Board came into existence represented the final result of a long series of discussions and negotiations in the course of which many new factors had been introduced. Under this agreement it seems to us clear that the Builders' Exchange was entitled, either during the course of the hearings or immediately after the termination thereof, to raise the issue of a decrease in all seventeen trades."

"During the presentation of the evidence this issue was raised and there was nothing in the course of the procedure followed by both parties in the presentation of their case, to indicate that the [fol. 589] issues were intended to be limited as is now suggested. Nor did the Building Trades Council in its replies to statements and arguments filed by the contractors, make the point that the Board had no right to consider the requests for decreases made in these statements and arguments."

"The award is a temporary one and does not undertake to dispose finally of any of the issues presented. It was, as shown in its face, not based upon conflicting evidence of budgets and living costs, but was reached upon a consideration of the official data published by the United States Bureau of Labor Statistics. Any additional evidence which might have been produced could not have affected this basis."

"The Board, in its former decision, did not dispose of the questions arising with respect to the Plasterers and Hod Carriers (tending plasterers). Further study of the case has satisfied the Board that since September 1920 the prevailing wage for Plasterers has been \$11.00 a day and for Hod Carriers (tending Plasterers) \$9.00 per day. For the same reasons applicable to the trades covered by our former award, these wages should, for the period of six

months from the effective date of our award, be reduced by 7½%; that is to say, the wages of Plasterers shall be \$10.20 per day and Hod Carriers (tending plasterers) \$8.35 per day."

"The wage scales fixed by the award of March 31st, 1921, and by this supplemental award, are to be effective for a period of six months beginning May 9th, 1921."

"After this decision was reached today, the Building Trades Council served notice that the Unions would not be bound by any decision decreasing wages. The Board, nevertheless, feels that in order that it may fulfill its duty to the public, it must render its decision, and that the responsibility for accepting or rejecting the award rests upon the parties to the Arbitration agreement."

In view of the fact that in an official communication to the Board of Arbitration under date of April 29, 1921, the President of the Building Trades Council made the following statement:

"Because of these facts, the Building Trades Council, by a unanimous vote, directed us to notify you that we decline to proceed further in the arbitration cases,"

the Arbitration Board felt that no other course was open to it except to withdraw entirely from the situation. Accordingly, after the announcement of its above decision of April 29, 1921, the Board ceased to function as such, although the members thereof informally participated as individuals in several discussions with various representatives of the employers and employees in the building trades, seeking to serve as mediators in the subsequent disputes which in [fol. 590] volved all the crafts of the building trades in either strikes or lockouts. However, these attempts at mediation were unsuccessful and the Board of Arbitration never functioned further nor had any further part in the subsequent developments in the controversy between the Builders' Exchange and the Building Trades Council.

It was not until some time after the award of the Board of Arbitration had been repudiated that the question of open shop, or "American Plan" basis of employment relations was raised. In all the conferences having to do with the creation of the Board of Arbitration and the establishment of its jurisdiction, as well as in the subsequent hearings and proceedings, it was clearly understood that the closed shop condition, which had existed in the building industry for a great many years, was to continue undisturbed. Neither the representatives of the building trades employers, nor the officials of the Chamber of Commerce ever made the suggestion of introducing the open shop principle into the industry, but accepted the fact that the Board of Arbitration was to serve, by mutual agreement of the employers and employees, under the existing closed shop agreements and conditions.

STIPULATION RE CORRESPONDENCE

It is hereby stipulated and agreed that the following letters, copies of which have been filed with various affidavits on the part of the United States of America, were and are general circular letters issued and sent to all members of the Builders' Exchange:

1. The following letters attached to affidavit of H. W. Kage:

- (a) President's letter #5, dated May 9, 1923.
- (b) President's letter #9, dated July 10, 1923, and marked "Exhibit #2."
- (c) President's letter #11, dated July 12, 1923, and marked "Exhibit #3."
- (d) Letter dated May 18, 1923, to George P. Schwaab, signed, "W. H. George, Chairman Industrial Relations Committee," and marked "Exhibit #6."

[fol. 591] 2. The following letters attached to the affidavit of Clinton B. Rogers on behalf of the complainant:

- (a) Letter dated March 1, 1923, to Sandusky Cement Co. from W. H. George, Chairman Industrial Relations Committee, marked "Exhibit #13."
- (b) Letter dated March 30, 1923, to Sandusky Cement Co. from W. H. George, President Builders' Exchange, marked "Exhibit #14."
- (c) Letter dated March 30, 1923, to Mr. George P. Schwaab from W. H. George, President Builders' Exchange, marked "Exhibit #15."
- (d) Letter dated April 3, 1923, from W. H. George, President Builders' Exchange to Sandusky Cement Co., marked "Exhibit #16."
- (e) Letter dated April 3, 1923, from W. H. George, President Builders' Exchange to Sandusky Cement Co., marked "Exhibit #17."
- (f) Letter dated May 18, 1923, to Sandusky Cement Co. from W. H. George, Chairman Industrial Relations committee, marked "Exhibit #19."
- (g) Letter dated May 24, 1923, entitled "President's letter #7," and marked "Exhibit #20."
- (h) Letter dated August 27, 1923, entitled "President's letter #12," and marked "Exhibit #23."
- (i) Letter dated April 9, 1922, signed "Builders' Exchange of San Francisco, ———, President," and marked "Exhibit #52."
- (j) Letter dated April 12, 1922, from Builders' Exchange, and marked "Exhibit #53."

(k) Letter dated April 12, 1922, to Sandusky Portland Cement Co. from Builders' Exchange of San Francisco, marked "Exhibit #54."

(l) Letter dated June 30, 1922, to Sandusky Cement Co. c/o George P. Schwaab, signed Builders' Exchange of San Francisco, and marked "Exhibit #60."

(m) Letter dated July 25, 1922, to Sandusky Cement Co., c/o George P. Schwaab, from W. H. George, Chairman Industrial Relations Committee, and marked "Exhibit #61."

(n) Letter dated July 29, 1922, to George P. Schwaab from W. H. George of the Builders' Exchange and marked "Exhibit #62."

(o) Letter dated August 4, 1922, to Sandusky Cement Co. from W. H. George, Chairman Industrial Relations Committee, and marked "Exhibit #63."

(p) Letter dated December 18, 1922, to Sandusky Cement Co. from W. H. George, Chairman Industrial Relations Committee, and marked "Exhibit #64."

(q) Letter dated August 2, 1923, to Sandusky Cement Co. from W. H. George, Chairman Industrial Relations Committee, and marked "Exhibit #69."

Dated Oct. 26, 1923.

[fol. 592]

STIPULATION RE CORRESPONDENCE

It is hereby stipulated and agreed that a letter, copy of which is hereto attached, was sent by W. K. Hughes & Co. to Golden Gate Building Material Co. on the day it bears date.

W. K. Hughes & Co., Importer-Exporter, American National Bank Building

San Francisco, November 4th, 1922.

Golden Gate Building Material Co., 559 10th Street, San Francisco, Calif.

DEAR SIR: Confirming the writer's conversation with your Mr. Knowles relative to a purchase thru us of 1,500 barrels of Lime, we now find that it is convenient to make cancellation of this Contract in line with Mr. Knowles' request, and we therefore have considered the Contract cancelled by mutual agreement.

Yours very truly, W. K. Hughes & Co. ———, President.

WKH-RC.

AFFIDAVIT OF H. C. MARSH ON BEHALF OF DEFENDANT

H. C. Marsh, being first duly sworn, deposes and says, that he is now and during all times herein mentioned has been San Francisco Manager of Haines, Jones & Cadbury Co., a copartnership. That said copartnership maintains stores and warerooms in the City and County of San Francisco from which it sells plumbers' supplies. It ships a great deal of plumbing material from other states than California to said warehouses and salesrooms in San Francisco. Said [fol. 593] materials so sent from without the State of California are shipped to said copartnership, unloaded from cars in San Francisco and put in the general stock of merchandise carried by it in San Francisco. Said plumbing materials when so shipped upon their arrival in San Francisco come here as their final place of destination and rest, and immediately upon arrival here are commingled with other goods, wares and merchandise of said copartnership. Thereafter said plumbers' materials are assorted, classified and put in the respective bins or on the respective shelves on which the general stock of said copartnership in San Francisco is kept and from which it is sold to persons in the City and County of San Francisco.

That upon arrival here and said distribution and classification and placing on shelves and in bins, as hereinbefore set forth, they have ceased to be commodities in interstate commerce and are used solely as local stock in the City and County of San Francisco from which said copartnership supplies its customers.

It is not true that between May 6th 1922 and until on or about December 1st 1922, said Haines, Jones & Cadbury Co., a copartnership, refused to sell and would not sell in or to be used in the City and County of San Francisco, or in the territory adjacent thereto, any plumbers' materials to any person more than one-half of whose employees are or were members of labor unions, or whose firm is or was a member of a labor union; but in that connection, this affiant alleges that during said time said copartnership did furnish plumbers' materials and supplies to contractors. And affiant is informed and believes, and on such information and belief alleges the fact to be that some of the contractors to whom it furnished such plumbers' and steamfitters' supplies during said period of time, employed nothing but union men and nothing but union firms.

[fol. 594] Affiant has read the testimony given by A. Lettich in the case of the people of the State of California vs. William H. George, et al., a transcript of which has been filed in the above-entitled cause. It is not true that said firm refused to sell said A. Lettich Bennett closet fittings, as he claims; but, upon the contrary, said A. Lettich visited the storeroom in San Francisco of said copartnership and examined said fittings, but at no time requested to purchase them. Said copartnership does not manufacture and ordinarily does not sell Bennett closet fittings. But in exceptional cases, for the accommodation of a customer who is buying other materials, said copartnership sometimes specially sends for an order of said Bennett closet fittings, and then only when said copartnership sells the entire combination of which said fittings are a part. That as

a matter of fact said Bennett closet fittings are manufactured in the city of Los Angeles, State of California, and whenever said copartnership has occasion to need them in San Francisco the affiant sends an order to Los Angeles where said Bennett closet fittings are manufactured, and has them shipped from Los Angeles to the City of San Francisco.

In regard to the slip joint angle valves which said A. Lettich testifies to, said slip joint angle valves were carried by said copartnership of Haines, Jones & Cadbury Co. in bins and piled on the shelves in the storeroom. Prior to said time said firm had not done any business with said A. Lettich for a considerable length of time, for affiant did not consider the credit of said A. Lettich good; and affiant felt on account of the person who accompanied him, that said A. Lettich, as a matter of fact, did not come in said store to purchase materials but only came in for the purpose of creating evidence in litigation. At that time he called he had not been a customer of said copartnership for a long time.

[fol. 595] AFFIDAVIT OF WARREN RYDER ON BEHALF OF DEFENDANTS

Warren Ryder, being first duly sworn, deposes and says:

I am a journalist and newspaper man by profession, following my calling in the City and County of San Francisco, State of California, but residing in the County of Marin, said state.

I have made a search of the building records of the City and County of San Francisco as they are issued by the Board of Works of said City and County, and find that during the year 1920, 5626 permits for building work were issued, representing a work value of \$26,729,992.00; during 1921, 6313 such permits were issued, representing a work value of \$22,244,672.00; during the year 1922, 8038 permits were issued, representing a work value of \$45,327,239.00. For the first nine months of 1923, that is to say, up to and including September 30, 1923, 7415 permits were issued, representing a work value of \$34,109,996.00.

The reports issued by the associated savings banks of San Francisco show the following savings banks' deposits in the City and County of San Francisco.

June 30, 1920.....	\$307,298,291.00
June 30, 1921.....	331,939,636.00
June 30, 1922.....	363,117,721.00
June 30, 1923.....	384,855,394.00

The figures issued by the San Francisco Real Estate Board show the following sales of real property:

During the year 1920.....	\$82,641,161.00
“ “ “ 1921.....	80,863,796.00
“ “ “ 1921.....	132,227,478.00
For the first 6 mos. of 1923.....	92,950,883.00

The Marine Department of the Chamber of Commerce has issued the following statistics gathered from the records of the State Board of Harbor Commissioners and the Federal Government showing the registered tons of shipping that arrived and departed during the following years:

[fol. 596] 1921.....	20,703,041 tons
1923	45,363,176 "

Values of Cargoes

1921.....	\$994,227,353.00
1923.....	1,976,133,506.00

AFFIDAVIT OF WILLIAM H. GEORGE ON BEHALF OF DEFENDANTS

William H. George, being first duly sworn, deposes and says, that the Builders' Exchange of San Francisco is a corporation organized and existing under the laws of the State of California. That the purpose of said corporation is to establish among those engaged in the building trade certain rules, regulations and standards and provide certain facilities for doing business among its members. Said Builders' Exchange, as such, is in no business of any kind. It neither buys nor sells building materials, nor does it engage in construction of any kind or character. Among its members there is the freest competition, and in no sense does the Builders' Exchange compete either with its members or with any other person doing any business. It has an assembly-room, lockers, mail boxes, and other facilities for the use of its members; arranges meeting places for them, and maintains files and statistics for their benefit.

AFFIDAVIT OF ATHOLL McBEAN ON BEHALF OF DEFENDANTS

Atholl McBean, being first duly sworn, deposes and says, that he is now and at all times herein mentioned has been a citizen of the United States, residing in the City and County of San Francisco, State of California. That from May, 1919, until May, 1921, he was President of the San Francisco Chamber of Commerce; and from May, 1921, until and near the end of the year 1921, he was ex-officio Chairman of the Committee on Industrial Relations of said San Francisco Chamber of Commerce. That from the time of the [fol. 597] formal organization of the Industrial Association of San Francisco until January, 1922, he was President of said Industrial Association of San Francisco, and ever since that time has been and now is a member of its Board of Directors.

Said Industrial Association of San Francisco is a voluntary unincorporated association of a large number of persons and firms re-

siding in or doing business in or near the City or County of San Francisco, and was formerly organized on or about November 8, 1921. Reference is hereby made to the Constitution and By-Laws of said Industrial Association heretofore filed and contained within the summary of the record presented by the complainant in the above-entitled action.

Said Industrial Association of San Francisco does no business of itself. Those who are members thereof include all walks of commercial and professional life and industry, over forty different lines of professional and business activities being represented by its membership which runs into some thousands. Its members compete among themselves in their respective industries, and compete with other members in the same industry who are not members of said Association. Said Industrial Association of San Francisco has nothing whatever to do with fixing the prices or quantities of any commodity that may be bought or sold, and any person in San Francisco who believes in the principle of the open shop in industry may become a member of said Industrial Association. Said open shop, as said Industrial Association defines it, means the opportunity for any man to work in the City and County of San Francisco regardless of whether he does or does not belong to any particular labor, political or religious organization; it also means the willingness of any employer to employ an employee whose services he requires, if [fol. 598] that employee be competent and reputable, regardless of his membership or non-membership in any labor, political or religious organization. Any one believing in these principles and desirous of living up to them can become a member of said Industrial Association, and said membership in nowise imposes upon him any obligation as to the prices, quantities or nature of materials, goods or services that he may buy or sell.

That said Industrial Association confines its activities exclusively to the City and County of San Francisco and was organized on account of the following reasons, to-wit:

(a) Prior to February 1st 1921 the building trades industry in the City and County of San Francisco was on what is term a "closed shop" basis; that is to say, with a negligible exception which these defendants believe did not exceed one per cent, every workman working in the building trades industries was a member and was compelled to be a member of some building trades union. There existed over fifty different unions in the building trades industries, each separate craft being organized into a separate union including not only the skilled crafts but even common labor. Each of these crafts insisted upon working on what is called the closed shop basis; that is to say, they refused to work on any building or for any employer who employed any building trade mechanic of any craft who was not a member of a San Francisco union. In addition to this they imposed restrictions upon the manner in which work could be done, the tools and appliances that could and could not be used, and imposed numerous other arduous, unnecessary and uneconomic conditions

upon the building industry. In the event of any difficulty between any member of any one of these building unions and his employers, it was the usual and customary thing not only for the employees of the particular craft involved in the difficulty to strike, but for every [fol. 599] other employee on the job or on the building or working for the employer who worked in any of the building trades crafts, likewise to join in a sympathy strike and boycott. These unions confederated and associated themselves together in the Building Trades Council, a central organization composed of all the respective building unions in the City and County of San Francisco, and acted in combination and concert in support of the demands of each and every one of its subordinate members. Thru the economic pressure of such a combination and thru threats of striking in many of these subordinate crafts and unions, the respective unions demanded from and received from their employers written agreements under the terms of which, generally speaking, their employers agreed that they would not employ any person in that particular calling who was not a member of the particular San Francisco union representing that craft. By reason of these conditions it was impossible for any person, either living in San Francisco or coming to San Francisco from any other point, to work in any of the building trades in San Francisco without becoming a member of the local San Francisco union, and in most instances the cost of such membership was prohibitive, and in many instances membership absolutely refused.

(b) That in addition to the foregoing conditions and restrictions, many of the unions promulgated and forced upon their employers rules limiting the number of apprentices; that is to say, the number of persons who would be permitted to learn the particular calling. In this manner the said unions and the said Building Trades Council obtained a monopoly of all building trade labor in the City and County of San Francisco.

(c) In the very early part of 1921 said Building Trades Council entered into a written arbitration agreement with the defendant Builders' Exchange of San Francisco and also with the San Francisco [fol. 600] Chamber of Commerce, which agreement was voluntarily entered into, and under the terms of which agreement they selected a board of arbitration which was to adjust and fix wages in the various building trades crafts for the year 1921. Thereafter said three parties jointly and voluntarily agreed upon the selection of His Grace, Reverend Edward J. Hanna, Archbishop of California, M. C. Sloss, recently retired Justice of the Supreme Court of the State of California, and George L. Bell, a citizen of the State of California, as the arbiters who were to determine the wages to be paid for the year 1921, and also were empowered to investigate and do away with some of these unjust and uneconomic rules, regulations and restrictions of the labor unions. Thereupon said Board of Arbitration proceeded with its hearings and made a tentative wage scale, whereupon the said Building Trades Council openly re-

puddied the said award, refused to be bound by it, and the members of the craft affected by said ruling struck and refused to work thereby putting to practically a complete standstill the building operations in the City and County of San Francisco solely on account of their refusal to abide by the wage award of an arbitration board that had been voluntarily selected by them as well as the other parties. Some weeks were thereupon spent in an endeavor to persuade the members of the striking unions to go back to work, but they refused to do so. Thereupon two mass meetings of large bodies of men were held, which mass meetings were attended by representative citizens of all walks of life in San Francisco for the purpose of determining what to do.

(d) It was resolved then that building work in San Francisco could not stop, and that it was most desirous to have the building work done by San Francisco people. But if the San Francisco mechanic refused to do the work, then mechanics must be employed [fol. 601] from elsewhere to do so. Funds were subscribed and raised and placed in the hands of a committee of the Chamber of Commerce, and mechanics of all kinds were employed for the purpose of going to work. In employing these mechanics they were given written contracts assuring them of protection, which contracts also set forth the wages which would be paid, which wages were the minimum wages fixed by the Arbitration Wage Board, and they were also assured that so long as they were competent mechanics they would be protected in their right of earning a living in San Francisco so long as they desired to remain here.

(e) A general appeal was made to the entire community, and support for the committee obtained from the general body of the community. The strike was then carried on for about five or six months, whereupon the Industrial Association was created to continue the work started by the committee of the Chamber of Commerce.

(f) During the progress of the strike it was announced by the committee and subsequently reaffirmed by the newly organized Industrial Association, that the people of San Francisco would protect any workman in his right to work in San Francisco regardless of membership or non-membership in a labor union. Work was offered repeatedly and repeatedly to the striking union men, the sole condition being that they must not refuse work on buildings or for employers who employed non-union men.

(g) Eventually, toward the end of September, nearly all of the unions went back to work, working on buildings and for employers who employed the non-union men who had been brought in earlier to help the strike situation, this condition of work being generally described as the open shop, to which no discrimination was exercised [fol. 602] on account of a man's membership or non-membership in a labor union.

All the crafts of the Building Trades Council, with the exception of one, to-wit, the granite workers, thus returned on open shop con-

ditions, and, with the exception of three of them, all have worked continuously and steadily in the City and County of San Francisco since that time. The three exceptions were: the bricklayers, the plasterers and the plumbers.

(h) In March of 1922, about ninety per cent of the mechanics working in the plumbing business in San Francisco were union men, but mingled with them were about ten per cent of non-union men. One day the Plumbers' Union served notice that the plumbers would strike unless these non-union men were dismissed from work in San Francisco. Their demand was refused, whereupon all the union plumbers in San Francisco again went out on strike, altho they made demand for no increase in wages and made no complaint upon any other working conditions; but they did insist that they would refuse to work unless these ten per cent non-union plumbers were discharged.

About the same time the bricklayers struck, likewise refusing to work for any contractor or any mechanic who employed non-union bricklayers; and the same condition took place with regard to the plasterers.

Had the demands of the Plasterers' Union, the Plumbers' Union and the Bricklayers' Union been acceded to, it would have meant the unjust and unlawful discharge of every non-union plumber, bricklayer and plasterer in San Francisco, and would have lead to the same demands being made in each of the other crafts of the Building Trades Council.

At the time of the general strike, when the committee of the Chamber of Commerce undertook to bring men in, the announcement was made that thereafter all restrictions on the number of apprentices who could learn a trade would be abolished; that all unjust and artificial rules limiting output would be ignored; that all rules and regulations prohibiting the use of proper healthful and improved modern mechanical appliances for the economical doing of work would be disregarded. And each and all of said regulations, rules and limitations have been, generally speaking, disregarded in the building industry in San Francisco since about June 1st, 1921. That each and all of said rules, regulations and limitations, militated against the building business, enhanced the cost thereof and interfered with the ready disposition of building materials, and in many instances retarded and prevented building work in the city of San Francisco.

That at the time of the second strike of the plasterers, plumbers and bricklayers in about March, 1922, a large percentage, to wit, about ninety per cent of all the employers, continued working on the American plan. In the plumbing industry, out of a total of about two hundred men engaged as employers in plumbing work, only about fifteen men commenced to operate under closed union conditions.

With the commencement of this second strike by the plasterers, plumbers and bricklayers, their three unions resumed the practices of boycotting all people who employed non-union mechanics, carrying

their boycott to the extent of striking on jobs far removed from the city of San Francisco because the particular employer happened to be working with non-union men in the city of San Francisco.

With the commencement of this second strike in March, 1922, a number of acts of violence occurred, in which non-union men were molested, harassed, insulted and beaten, and property on which non-union mechanics were working was wantonly destroyed or damaged. [fol. 604] (i) For many years prior to March, 1921, it had frequently been the custom of these unions to boycott materials fabricated by manufacturers and used in their respective crafts for any, and sometimes no reasons whatsoever, and manufacturers of building materials, such as cement, lime, mortar and plumbing materials, frequently had their materials blacklisted and boycotted to such an extent that their material was forced off of a particular market, these boycotts and blacklists being done by the union as a part of a union controversy.

To meet this situation, and to protect themselves from similar boycotts and blacklists, in about April or May of 1922, after the second strike, which was occasioned solely by the demand of the union men that all non-union men be dismissed, some material houses, including some of these defendants, did refuse to sell to the unions during the continuance of that strike, or to the agents, representatives and associates of the unions during the continuance of that strike, materials to be used on closed shop union work in the city of San Francisco.

A large part of the materials so used was fabricated and manufactured in the State of California. Some were manufactured without the State of California, but shipped to the State of California and to the City of San Francisco, where they reached their final destination and resting place and were put on the general shelves and in the general bins of stores operated in the City of San Francisco. That these goods, so refused to such unions and representatives and aids and associates of the unions, were not interstate goods or interstate shipments or commerce of any kind, character or description, but had lost completely their interstate commerce character and had become commingled with other properties within the State of California. That said refusals in nowise were made for the purpose of restraining or interfering with or impeding inter-[fol. 605] state commerce of all kind, character or description, nor did it have that result or effect; but, on the contrary, said refusals were made solely by those who made such refusals to protect themselves and their business against the unjust acts, boycotts and blacklists of the striking unions.

That, as a matter of fact, interstate shipments have neither been restrained, nor impeded, nor interfered with, but, on the contrary, due to the fact that San Francisco was operating on the open shop principle, and was a city where union men as well as non-union men could freely obtain employment, business conditions generally improved, and during the year 1922, the year complained of, the shipment of building materials into the State of California greatly increased. That prior to June 1st 1921, many commodities shipped

in interstate commerce had never been shipped into the city of San Francisco or into the State of California or used there in any appreciable quantities due largely to the local conditions brought about thru the closed shop efforts of the unions. But that since June 1st 1922, San Francisco and the State of California have both become open markets for building materials manufactured and shipped from other states and foreign countries in very large quantities, which had never been shipped into this state in real commercial quantities before.

(j) That it is true that during the course of this strike the Industrial Association did aid in financing the transportation of mechanics to San Francisco and in paying for the cost of protecting them, as likewise did the Builders' Exchange of San Francisco.

It is also true that some of these defendants employed these non-union mechanics and are still employing them. It is likewise true that the Industrial Association of San Francisco has contributed financially to the labor controversy with the unions. But it is not true that the defendant, the Industrial Association of San Francisco, and/or these defendants have combined or conspired one with the other, or with anybody else, at any time, or for any purpose, to interfere with interstate commerce.

That said Industrial Association has in the last year and a half taught and trained over eleven hundred apprentices to become proficient in various useful trades, all of said instruction having been free to the students and apprentices, the entire expense thereof having been borne by said Industrial Association.

That said Industrial Association has no financial interest in any business or line of business or industry or enterprise, but is solely concerned with the betterment of conditions in San Francisco so as to foster and aid the natural development and prosperity of the community of San Francisco. It is a community organization open to any citizen or resident in any walk of life who believes in and is willing to aid in free industrial and labor conditions.

AFFIDAVIT OF E. T. PORTER ON BEHALF OF DEFENDANTS

E. T. Porter, being first duly sworn, deposes and says:

I am a resident of the City and County of San Francisco, State of California, and by occupation have been in the painting business for a large number of years. Up until 1921 practically all the painters of San Francisco belonged to the Painters' Union. The painting industry was thoroly unionized. Among the restrictions and rules imposed by said Painters' Union was one which prohibited any brush more than four inches in width being permitted to be used in or on any building in San Francisco. Another rule prohibited what is termed a sweep-brush on the roofs, that is a wide brush with a long handle. Roof painting was compelled to be

done with a small brush. The Union forbade any journeyman or helper to touch his tools or load wagons before eight a. m. or after five p. m. Inasmuch as under the closed shop conditions existing [fol. 607] in San Francisco a strike in all the building crafts would have resulted from a breach of these rules, the union rules were forced upon the community. No union painter would paint lumber put up by a non-union man. No union painter would permit the labor-saving device of a paint-gun or a paint-spray.

AFFIDAVIT OF H. L. KNOWLES ON BEHALF OF DEFENDANTS

H. L. Knowles, being first duly sworn, deposes and says:

I am Vice-President of the Raymond Granite Company and have been during most of my life in the granite business, quarrying, selling and erecting granite for granite buildings, particularly in and around the City and County of San Francisco, State of California.

While engaged in such business I became acquainted with the rules of the Granite Cutters' Association of America, hereinafter described as the Union.

Up to 1921 the granite work done in and around San Francisco was practically all closed shop union, and every firm had to abide by the union rules or find itself unable to have its granite erected or used. In the work of quarrying, cutting fabricating or manufacturing granite the rules of the Union required that every feature of this work must be done by a member of the union, altho in many cases machinists would have been much more economical for the handling of the machinery, and laborers for the common unskilled work. As a result of this the industry was compelled to pay the high wage of granite cutters not only for the cutting of granite but for common labor. The union rules limited the apprentices to one apprentice for every thirteen journeymen, and stipulated that the apprentice must be between the ages of seventeen and twenty-one years, and his term three years in length. This rule prevented the teaching of the trade to an unlimited number of men or boys in the [fol. 608] smaller shops. Many of the smaller shops employed but two or three journeymen, and I know of cases where proprietors of these smaller shops have been prohibited from teaching sons the trade. Under the rules no piece-work or sub-contracting to any highly skilled workman such as carvers was allowed. Under the union rules firms manufacturing or selling granite were only permitted to sell granite products to companies that employed union men exclusively. If the firms violated this rule, it resulted in a strike and the tying up of business. Affiant knows of one case where the men went out on strike because the employers were about to ship a carload of granite to a firm outside of the state because that firm, after the material had been cut by the granite company, had adopted a different plan than a union plan of operation.

Among other rules of the union was one which prevented a man

who had not been a resident of the neighborhood for a set time being employed as long as any local man was without a job. This prevented granite companies from seeking and bringing in non-resident skilled men and compelled them to employ local men often of inferior ability.

AFFIDAVIT OF EDWARD H. HORTON ON BEHALF OF DEFENDANTS

Edward H. Horton, being first duly sworn, deposes and says:

I am engaged in the building material business in San Francisco, California, doing business under the registered name of Horton Lime Company. Among other building materials that I have dealt in for many years last past has been Blubber Bay Lime, manufactured at Blubber Bay, British Columbia. I buy this lime outright from the manufacturing company in British Columbia and have it shipped by water to San Francisco and stored in Mission Bay Warehouse No. [fol. 609] 1. From this warehouse I ship lime to points in and around the bay of San Francisco and various points of central and northern California. Some of it is delivered to trucks, but most of it is shipped by rail to various sections of the State of California.

I have for many years been selling Blubber Bay Lime to The Independent Lumber Company, of Livermore, California, which is represented by and I believe controlled by Ernest G. Wentz, whose affidavit signed October 5th, 1923, is on file in the above entitled cause. All of the lime that I have sold to said Independent Lumber Company has been sold in the manner above stated, from my own stock of lime in San Francisco. Much of it has been in small shipments of less than one carload each, and occasionally I have sold them as high as a carload at a time. When I have sold them my lime delivery has been made from Mission Bay Warehouse No. 1, and has been loaded aboard freight cars and sent from San Francisco to Livermore. I am still selling Blubber Bay Lime to Independent Lumber Company. At no time have I ever imposed any restriction or condition or caused any restriction or condition to be imposed upon the said Independent Lumber Company in the free handling or disposition of said lime that they have bought from me; and at no time have I ever, directly or indirectly, interfered with their freedom to resell the same; nor have I insisted, nor asked nor intimated that they must sell to certain persons and refuse to sell to others.

AFFIDAVIT OF CHARLES M. GUNN ON BEHALF OF DEFENDANTS

Charles M. Gunn, being first duly sworn, deposes and says:

I am a resident of the County of Marin; State of California, and am in the steel business; that is to say, selling and installing steel [fol. 610] bars and steel materials of different kinds in buildings. The men who handle the steel that I am interested in are members of

the Housesmiths' Union. The Housesmiths of San Francisco were practically entirely unionized up to 1921, and the contracting housesmiths, of whom I was one, were compelled to abide by the union regulations or be unable to do work. Among these regulations were the following:

No laborer was permitted to handle steel when dropped off by truck. We were compelled to hire full skilled journeymen and pay them their skilled wages for this type of work. The housesmiths insisted that housesmiths be employed in belting steel bars in the warehouse, altho this could readily be done and is now being done by common laborers. For many years no apprentices of any kind were permitted by the Housesmiths' Union and no labor saving devices.

AFFIDAVIT OF ALEXANDER MENNIE ON BEHALF OF DEFENDANTS

Alexander Mennie, being first duly sworn, deposes and says, that he now is and during all times herein mentioned has been engaged in the plastering business in the City and County of San Francisco, State of California.

Affiant has read the affidavit of W. C. Reveal, dated September 27th, 1923, and filed in the above-entitled cause, and in particular that portion thereof in which said Reveal claims that this affiant together with Walter Jamieson and Thomas Campbell made certain threats against said Reveal or against the Tacoma & Roche Harbor Lime Company. This affiant alleges that he never has either individually or with said two men, or with any other men or persons, made any threats of any kind to said Reveal or to the Tacoma & Roche Harbor Lime Company.

Affiant further alleges that he never was a member of any committee with said Jamieson and Campbell that either called upon [fol. 611] or interviewed said Reveal for any purpose whatever. And he particularly denies that he has at any time ever used any language which could be distorted or construed to mean any threat of any kind against said Reveal or against the Tacoma & Roche Harbor Lime Company.

AFFIDAVIT OF CLINTON B. ROGERS ON BEHALF OF DEFENDANTS

Clinton B. Rogers, being first duly sworn, deposes and says, that he is the Clinton B. Rogers who heretofore and on or about October 5, 1923, signed an affidavit on behalf of the United States in the above entitled cause, attaching the correspondence of the Sandusky Cement Company.

That said Sandusky Cement Company distributes its product thru the medium of dealers, seeking in every possible way to protect its own dealers in their respective territories. For some years last past said Sandusky Cement Company has distributed in the various cities in the State of California thru various dealers, among them the

Henry Cowell Lime & Cement Co. That it has distributed two carloads in Redwood City, San Mateo County, thru Gray Thorning Lumber Company. That for the protection of its own customers, it expects those customers to resell within their own cities as otherwise said Sandusky Cement Company would lose its distributors in a city if other distributors from other cities interfered with their trade in that city.

That said Sandusky Cement Company sold to Gray Thorning Lumber Company for resale in its district, to-wit, Redwood City, San Mateo County, but said Gray Thorning Lumber Company, against the business policy of the Sandusky Cement Company, diverted said cement to the City of San Jose, where said Sandusky Cement Company already had another distributing agency. That [fol. 612] said diversions of shipments were made by the said Gray Thorning Lumber Company in violation of the company's policy in that regard. Upon being advised of this fact and practice on the part of the Gray Thorning Lumber Company, the Sandusky Cement Company ceased to have any further interest in said Gray Thorning Lumber Company as a customer. The Sandusky Cement Company at no time ever refused to sell to the Gray Thorning Lumber Company but followed the ordinary commercial practices of discouraging the customer, to wit, the Gray Thorning Lumber Company, from purchasing its product. Among other means it asked the Gray Thorning Lumber Company to furnish a permit. This the Gray Thorning Company never did and the matter was dropped there. The Sandusky Cement Company is always willing, and always has been willing, to ship any materials required by Gray Thorning Lumber Company if Gray Thorning Lumber Company will confine its resales to its own district.

[fol. 613]

EXHIBIT IN EVIDENCE

Stipulation

It is hereby stipulated that the attached telegram, dated Cleveland, Ohio, October 13th, 1923, and signed C. B. Rogers, addressed to Will H. George, care of Henry Cowell Lime & Cement Co., was sent on the day it bears date; and that the facts set forth in said telegram may be deemed a part of the affidavit of said C. B. Rogers and accepted with the same faith and credit as the said message had been included in said affidavit.

The introductory phrase, "At request of Brown", means that Brown, the Western representative of the Sandusky Cement Company, telegraphed to said C. B. Rogers asking for said information.

"Cleveland, Ohio, October 13, 1923.

Will H. George, care Henry Cowell Lime and Cement Co., 2 Market St., San Francisco, Calif.:

At request of Brown stop carloads Medusa cement shipped San Francisco territory as follows nineteen twenty one twenty three car-

loads nineteen twenty two fifty seven carloads nineteen twenty three to October first forty two carloads.

C. B. Rogers.

AFFIDAVIT OF CHARLES M. CADMAN ON BEHALF OF DEFENDANTS

Charles M. Cadman, being first duly sworn, deposes and says:

That he now is and during all times herein mentioned has been General Manager of the Atlas Mortar Co., which is engaged in the business of manufacturing and selling lime, mortar and other building materials to consumers. That it now is and for many years last past has been the practice of dealers in building materials not to [fol. 614] handle the produce of manufacturers who sell direct to consumers. It has been and is considered had business principle and policy for firms like the Atlas Mortar Co., which maintain extensive distributing plants and sales forces to handle a product for a manufacturer if that manufacturer within the territory sells directly to consumers, as thereby it is felt that the consumer is getting the benefit of the entire cost and work of the distributing company, and the distributing company is carrying the entire overhead expense for the manufacturer and losing the trade which should come from it, and losing the distributor's profit on the goods.

That during the years 1922 and 1923 companies like the Atlas Mortar Co. have at times protested to companies whose products they were handling when those companies themselves were selling directly to the usual regular customers of the distributing company like the Atlas Mortar Co.

That in the case of the Golden Gate Building Material Co. it was not considered that they were in the building material business at all as they were composed of five plasterers who consumed materials and bought goods directly merely for their own personal use, seeking to obtain dealers' prices in competition with the other thirty or forty plasterers who were buying individually. That therefore said Atlas Mortar Co. has at times protested against the business policy of an outside factory selling by direct shipment to the very customers of the Atlas Mortar Co. who were buying that same manufacturer's product thru the Atlas Mortar Co. That this has been the entire reason of the objection to selling to the consumers.

AFFIDAVIT OF T. J. CAMPBELL ON BEHALF OF DEFENDANTS

T. J. Campbell, being first duly sworn, deposes and says:

That he now is and during all times herein mentioned has been engaged in the bricklaying business in the City and County of San [fol. 615] Francisco, State of California, and elsewhere.

Affiant has read the affidavit of W. C. Reveal, dated September 27, 1923, and filed in the above-entitled cause, and in particular

that portion thereof in which said Reveal claims that this affiant, together with Alexander Mennie and Walter Jamieson, made certain threats against said Reveal or against the Tacoma & Roche Harbor Lime Company. This affiant alleges that he never has, either individually or with said two men, or with any other men or persons, made any threats of any kind to said Reveal or to the Tacoma & Roche Harbor Lime Company.

Affiant further alleges that he never was a member of any committee with said Alexander Mennie and Walter Jamieson that either called upon or interviewed said Reveal for any purpose whatever. And he particularly denies that he has at any time ever used any language which could be distorted or construed to mean any threat of any kind against said Reveal or against the Tacoma & Roche Harbor Lime Company.

AFFIDAVIT OF L. E. CRAWFORD ON BEHALF OF DEFENDANTS

L. E. Crawford, being first duly sworn, deposes and says:

I am employed by the Builders' Exchange of San Francisco, in charge of the Permit Department in said City and County of San Francisco for over two years last past. No permit has ever been refused any person because such person employed a union foreman, and no permit has ever been refused any person because such person employed more than fifty per cent union men.

That permits have only been required in the sale or delivery of the following articles and none other: cement, lime, plaster, rock, sand, gravel and clay products.

AFFIDAVIT OF CLARENCE A. ENGLISH ON BEHALF OF DEFENDANTS

Clarence A. English, being first duly sworn, deposes and says:

That I am and was at all times herein mentioned, the Pacific [fol. 616] Coast Sales Manager of the United States Gypsum Company of Illinois, and make this affidavit for and on behalf of said Corporation; that the question of selling plaster to A. Knowles of San Francisco has never been an issue between Mr. Knowles and ourselves owing to the fact that it is our custom to sell plaster only to dealers and institutions in the business of buying and selling building supplies. For this reason, Mr. Knowles could only purchase such of his plaster requirements of our products from one of our dealers.

Sometime during the Spring of 1923, Mr. Max Kuhl, made the statement, in the presence of several directors of the Golden Gate Building Material Company and also of myself, that as far as any industrial situation in San Francisco was concerned, there was no reason why the Golden Gate Building Material Company should

not purchase plaster, or any other building supplies, without restrictions from us.

Since June of this year, we have sold our products to the Golden Gate Building Material Company of San Francisco. In selling this plaster to the Golden Gate Building Material Company, we have no control over the re-sale of our products, and, therefore, the Golden Gate Building Material Company has been selling without any restriction our plaster to such customers as it might elect.

For a certain period of time we refrained from selling the Golden Gate Building Material Company, for the reason that it appeared to us the institution was formed by certain plastering contractors, merely for the purpose of obtaining building supplies at a dealer's price. Under these conditions, it appeared to us that it would be unfair to other plastering contractors if we recognized the Golden Gate Building Material Company as a dealer. When the Golden [fol. 617] Gate Building Material Company started to function as a dealer, selling all plastering contractors, as well as those contractors who had stock in that Company, at regular retail prices, the Golden Gate Building Material Company was entitled, in our opinion, to receive goods at dealer's prices in the same manner as any other building supply dealer. Accordingly, we started selling to the Golden Gate Building Material Company and have since continued.

AFFIDAVIT OF PAUL I. FAGAN ON BEHALF OF DEFENDANTS

Paul I. Fagan, being first duly sworn, deposes and says:

That he now is and during all times herein mentioned has been engaged in the import and export business in the City and County of San Francisco, State of California, and has known W. K. Hughes for a great many years, having visited him many times in his office, and having met said W. K. Hughes many times in affiant's office. But while engaged in the import and export business affiant has not been engaged directly or indirectly in the import or export of any building materials.

That affiant recalls calling upon the said W. K. Hughes during the summer or fall of 1922 in company with Leon G. Levy, but at no time either at said interview, or at any other time, were any threats made either by affiant or said Leon G. Levy of any kind or character against the said W. K. Hughes. The Industrial Association and the industrial conditions of San Francisco were discussed at that time, but neither this affiant nor said Leon G. Levy ever offered to buy any contract of said W. K. Hughes with the Golden Gate Building Material Co. And at no time did either this affiant or the said Leon G. Levy make any statement to the said W. K. Hughes which should cause him to infer that unless the shipments which said W. K. Hughes was bringing in to San Francisco were sold to the affiant or to the Industrial Association, that

it would be impossible for said W. K. Hughes to get delivery [fol. 618] thereon. Upon the contrary, at said time the said W. K. Hughes undertook to see the officers of the Golden Gate Building Material Co., and affiant has since said time been informed by said W. K. Hughes and others that as a result of said interview arranged by the said W. K. Hughes between said W. K. Hughes and the said Leon G. Levy, and some of the members of the Golden Gate Building Material Co., the various plasterers of San Francisco arranged for and executed an agreement of some kind with the Industrial Association of San Francisco. That since said time this affiant has been informed by the said W. K. Hughes that by reason of said arrangements made thru the said W. K. Hughes between the Industrial Association of San Francisco and the said Golden Gate Building Material Company, the said Golden Gate Building Material Company had notified the said W. K. Hughes that it did not want said 1,500 barrels which it had contracted to purchase from said W. K. Hughes, and that it, the said Golden Gate Building Material Company, cancelled its own contract with said W. K. Hughes.

AFFIDAVIT OF W. J. FEARY ON BEHALF OF DEFENDANTS

W. J. Feary, being first duly sworn, deposes and says:

That he now is and during all times herein mentioned has been the Manager for the Holmes Lime & Cement Co., and the Western Lime & Cement Co., which companies are engaged in the business of manufacturing and selling lime, mortar and other building materials to consumers. That it now is and for many years last past has been the practice of dealers in building materials not to handle the product of manufacturers who sell direct to consumers. It has been and is considered bad business principle and policy for firms like the Holmes Lime & Cement Co., and the Western Lime & Cement Co., which maintain extensive distributing plants and [fol. 619] sales forces to handle a product for a manufacturer if that manufacturer within the territory sells directly to consumers, as thereby it is felt that the consumer is getting the benefit of the entire cost and work of the distributing company, and the distributing company is carrying the entire overhead expense for the manufacturer and losing the trade which should come from it, and losing the distributor's profit on the goods.

That during the years 1922 and 1923 companies like the Holmes Lime & Cement Co., and the Western Lime & Cement Co., have at times protested to companies whose products they were handling when those companies themselves were selling directly to the usual regular customers of the distributing company like the Holmes Lime & Cement Co., and the Western Lime & Cement Co.

That in the case of the Golden Gate Building Material Co., it was not considered that they were in the building material business at all as they were composed of five plasterers who consumed materials and

bought goods directly merely for their own personal use, seeking to obtain dealers' prices in competition with the other thirty or forty plasterers who were buying individually. That therefore said Holmes Lime & Cement Co., and the Western Lime & Cement Co. have at times protested against the business policy of an outside factory selling by direct shipment to the very customers of the Holmes Lime & Cement Co., and the Western Lime & Cement Co., who were buying that same manufacturer's product thru the Holmes Lime & Cement Co., and the Western Lime & Cement Co. That this has been the entire reason of the objection to selling to the consumers.

AFFIDAVIT OF W. H. GEORGE ON BEHALF OF DEFENDANTS

W. H. George, being first duly sworn, deposes and says :

I am and during all times herein mentioned have been Secretary [fol. 620] and General Manager of the Henry Cowell Lime & Cement Co., a corporation organized and existing under the laws of the State of California, having its principal place of business in the City and County of San Francisco, and its manufacturing plant and works in the County of Santa Cruz, said state.

Said corporation is engaged in the business of manufacturing cement and also buying and selling lime, plaster and building materials of various kinds. It has warerooms and salesyards in the city of San Francisco, the city of San Jose, the city of Stockton, and other cities in northern California, and maintains a sales and distributing business for building supplies of all kinds in said cities.

On or about July 1st 1922, said Henry Cowell Lime & Cement Co. made an agreement with W. P. Payne, Sr., as the representative of the Jumbo Plaster Company of the State of Utah, under and by which said Henry Cowell Lime & Cement Co. undertook the sale and distribution of the plaster of said Jumbo Plaster Company of Utah. That said arrangement provided that said Henry Cowell Lime & Cement Co. should have exclusive right in said cities in which it did business to handle and distribute the plaster of said Jumbo Plaster Company. That said business is handled by said Henry Cowell Lime & Cement Co. purchasing from said Jumbo Plaster Company its plaster and paying for the same and shipping said plaster from the State of Utah to the warerooms and sales yards of said Henry Cowell Lime and Cement Co. That said Henry Cowell Lime & Cement Co. in turn sells from its own yards and from its general stock in said yards and warerooms said plaster of said Jumbo Plaster Company, and sells said plaster as its own property and not as the legal agent of the Jumbo Plaster Company.

That in like manner said Henry Cowell Lime & Cement Co. had [fol. 621] an arrangement with the Sandusky Cement Company of Cleveland, Ohio, under and by which said Henry Cowell Lime & Cement Co. handled the product of said Sandusky Cement Company and no similar product of any competitor. The cement manufac-

tured and sold by said Sandusky Cement Company is not ordinary building cement used in the erection of buildings or the doing of concrete work. Said cement is a special waterproof white cement only used in very fancy work such as the setting of certain types of tiling. That said brand of the said cement manufactured by said Sandusky Cement Company was known and is hereinafter described and referred to as Medusa cement. That said Henry Cowell Lime & Cement Co. has handled and sold said Medusa cement for a number of years last past, and during said time has always refrained from and refused to handle or sell any of that particular type of cement manufactured by any other person or firm except said Sandusky Cement Company. That said Henry Cowell Lime & Cement Co. handled it in this way: It purchased from the Sandusky Cement Company, brought to its various respective sales yards and salesrooms and resold again from its general stock in its general sales yards and salesrooms.

That among its other places said Henry Cowell Lime & Cement Co. sold said Sandusky Cement Company in the city of San Jose, Santa Clara County, from its sales yards and salesrooms in said city of San Jose. To indicate the extent to which cement of that particular type is commonly used, affiant avers that the normal consumption per annum in a city of the size of San Jose is in his opinion not exceeding two carloads, and the annual consumption of a city like Redwood City, San Mateo County, State of California, is normally only about one carload.

During the years 1921 and 1922 the building trades unions of the [fol. 622] County of Santa Clara were and still are boycotting said Henry Cowell Lime & Cement Co. and boycotting its products. During said time litigation was pending between said Henry Cowell Lime & Cement Co. and said building trades unions, reference hereby being made to the former affidavit of affiant filed on motion for a temporary injunction in the above-entitled cause.

That during all times herein mentioned Gray Thorning Lumber Company was engaged in the business of buying and selling building materials and supplies in Redwood City, County of San Mateo, State of California. That at one time said Gray Thorning Lumber Company was a customer of said Henry Cowell Lime & Cement Co., buying building materials from it, and had never to affiant's knowledge done any selling of building supplies in the City and County of San Francisco, and prior to 1921 and had not so far as affiant recalls done any in the city of San Jose.

About two or three years ago differences arose between said Gray Thorning Lumber Co. and said Henry Cowell Lime & Cement Co. as the result of which the relationship between the two was terminated, and said Gray Thorning Lumber Company took over the accounts and handled the products of one of the competitors of said Henry Cowell Lime & Cement Co. That during 1922, and while bitterness of feeling existed between the said Gray Thorning Lumber Company and said Henry Cowell Lime & Cement Co., and while the boycott against the products and business of said Henry

Cowell Lime & Cement Co. was on, and while the litigation between said Henry Cowell Lime & Cement Co. and the building trades unions was pending, said Gray Thorning Lumber Company obtained from the Sandusky Cement Company and shipped into the city of San Jose one carload of said Medusa cement. That some [fol. 623] of said Medusa cement was sent in surreptitiously and under other names than the Gray Thorning Lumber Company. That said Henry Cowell Lime & Cement Co. sought to find out if the Sandusky Cement Company was sending said cement into the city of San Jose, and if it was not doing so, who was shipping said commodities in. And the said Henry Cowell Lime & Cement Co. did advise and notify said Sandusky Cement Company that if under the existing conditions the Sandusky Cement Company should ship into the city of San Jose the product which said Henry Cowell Lime & Cement Co. was already handling for it there, that then the said Henry Cowell Lime & Cement Co. would discontinue buying the product of said Sandusky Cement Company, but would open business connections and handle the product of some other company manufacturing and selling that type of cement. Said Henry Cowell Lime & Cement Co. at that time was not handling any other cement of the character referred to except the product of the Sandusky Cement Company, and was refusing to handle or sell that particular type of cement manufactured by the competitors of the Sandusky Cement Company. At that time said Henry Cowell Lime & Cement Co. was maintaining a large and extensive distributing plant in the city of San Jose, including salesrooms and salesyards and had been for a number of years engaged in said business in the city of San Jose, County of Santa Clara, with a large distribution business, while at the same time Gray Thorning Lumber Company had no such place in the city of San Jose, and so far as affiant is informed and believes, anywhere in the County of Santa Clara. Affiant is informed and believes and therefore avers the fact to be that said Gray Thorning Lumber Company diverted a carload or two of said Medusa cement to San Jose and also carried by automobile truck Medusa cement from its yards in Redwood City to San Jose, de-[fol. 624] livering the cement to the building trades unions in the city of San Jose.

Affiant has read the affidavit of H. W. Kage, filed in the above-entitled action on behalf of the government, but before reading or seeing said affidavit affiant had not seen nor heard of the telegrams or correspondence contained in the body of said affidavit, to wit: telegram of May 31, 1923, from Gray Thorning Lumber Company to Sandusky Cement Company; telegram of May 3, 1923, from Sandusky Cement Company to George P. Schwaab, telegram of May 4, 1923, from Sandusky Cement Company to George P. Schwaab, telegram of May 7, 1923, from George P. Schwaab to L. E. Crawford; telegram of May 7, 1923, from L. E. Crawford to George P. Schwaab; telegram undated from Los Angeles from George P. Schwaab to Sandusky Cement Company; telegram of May 8, 1923, from Sandusky Cement Company to George P. Schwaab; telegram of May 8, 1923, from Gray Thorning Lumber Company to San-

dusky Cement Company; telegram of May 9, 1923, from Sandusky Cement Company to George P. Schwaab; telegram of May 9, 1923, from George P. Schwaab to Sandusky Cement Company; telegram of May 10, 1923, from George P. Schwaab to Sandusky Cement Company; telegram of May 11, 1923, from C. B. Rodgers to George P. Schwaab; telegram of May 12, 1923, from Sandusky Cement Company to Gray Thorning Lumber Company; or the letter of May 12, 1923, from Gray Thorning Lumber Company to Sandusky Cement Company.

That affiant had neither seen nor heard of any of said telegrams before reading said affidavit, nor had he ever heard of the incident or incidents therein referred to. Prior to said time said Gray Thorning Lumber Company had already shipped quantities of Medusa cement from its own yards in Redwood City to the city of San Jose, and had the Sandusky Cement Company continued to [fol. 625] ship to Gray Thorning Lumber Company for reshipment or diversion to the city of San Jose, said Henry Cowell Lime & Cement Co. would have terminated its own business relationship with said Sandusky Cement Company as in the opinion of affiant it would have been unfair, unjust and unsound business practice for the Sandusky Cement Company to permit the normal and natural handling of its business by its then representative Henry Cowell Lime & Cement Co. to have been interfered with by a firm with whom said Henry Cowell Lime & Cement Co. had a quarrel and particularly during a time when the business of said Henry Cowell Lime & Cement Co. was being boycotted by the labor unions of San Jose.

In the event that said Sandusky Cement Company had permitted a continuance of the practices by the Gray Thorning Lumber Company, the said Henry Cowell Lime & Cement Co. would have negotiated for and sought to obtain the handling in said territory of that particular type or kind of cement manufactured by one of the competitors of Sandusky Cement Company, and this the Sandusky Cement Company well knew. And the reason that the Sandusky Cement Company refused to sell further to said Gray Thorning Lumber was of its knowledge of what the Henry Cowell Lime & Cement Co. would do. Prior thereto and despite the permit system, the Sandusky Cement Company had repeatedly sold its Medusa cement to Gray Thorning Lumber Company without permit or without conditions or restrictions, and affiant is of the opinion that with said knowledge, the Sandusky Cement Company did deliberately request a permit from the Gray Thorning Lumber Company in order to avoid losing the connection with the Henry Cowell Lime & Cement Co. and at the same time be able to sell the Gray Thorning Lumber Company that it would not sell said Medusa cement without a permit. As a matter of fact the Gray [fol. 626] Gray Thorning Lumber Company, so far as affiant knows, does not sell to or in the City of San Francisco. Affiant has never heard of its doing so. Moreover, said Gray Thorning Lumber Company has never been refused a permit by the Builders' Exchange of San Francisco; and, so far as affiant knows, said Gray

Thorning Lumber Company has never sought or asked for a permit of said Builders' Exchange of San Francisco.

Affiant refers now to the following letters introduced on behalf of the government, to wit: Telegram of October 28, 1922, from W. H. George to George P. Schwaab; telegram of October 30th, 1922, from George P. Schwaab to W. H. George; letter of November 10, 1922, from W. H. George to Industrial Association of Santa Clara County; letter of November 14, 1922, from George P. Schwaab to W. H. George; letter of November 14, 1922, from Industrial Association of Santa Clara County to W. H. George; letter of November 15, 1922, from W. H. George to George P. Schwaab. These telegrams and letters refer to Medusa Cement manufactured by the Sandusky Cement Company and sold to the labor unions of San Jose for the strikers. Affiant recalls shipments like that having been made during the entire period of the trouble; in fact, these shipments caused affiant to make diligent search to ascertain if the Sandusky Cement Company, whose product exclusively was being sold by Henry Cowell Lime & Cement Co. was encouraging other representatives of itself to injure the business of said Henry Cowell Lime & Cement Co., and affiant frankly and unreservedly told said Sandusky Cement Company that if it was doing that the account of the Henry Cowell Lime & Cement Co. with it would be closed.

Affiant alleges that for over two years now thousands of union men have been continuously and steadily at work in the City and County of San Francisco with good pay. That in that time there has been [fol, 627] hardly a strike except among the plumbers and plasterers, and these strikes are long since over. So far as affiant knows, the union and non-union men are working contentedly side by side on the buildings of San Francisco. Affiant believes that over seventy per cent of the men at work on the buildings in San Francisco are and have been union men, and that in the neighborhood of twelve or thirteen thousand union men are so employed. That neither the Builders' Exchange nor any of the other defendants have ever interfered with them in their work, but, on the contrary, that members of the Builders' Exchange are constantly and regularly employing them and glad to have the union men working for them. Affiant alleges that there has been employment open to every union man desirous of having employment for over two years last past, and that no union man during said period of time has been prevented from obtaining employment at very good wages with very good working conditions.

Affiant alleges that during the strikes hereinbefore referred to, the Builders' Exchange did maintain a system or bureau thru and by means of which all members of the Builders' Exchange and others might be informed as to the manner in which different contractors and sub-contractors were operating their business, to wit, whether the same was exclusively closed shop union, or whether the same was open shop. That in connection therewith, so-called permits were issued to all persons operating on the open shop basis; that is to say, to all contractors and sub-contractors who did not discriminate

against non-union men; while permits of the Builders' Exchange were withheld or refused from such contractors or sub-contractors as refused to employ non-union men of any kind.

Affiant alleges, however, that said permit system was operated by [fol. 628] said Builders' Exchange in the City and County of San Francisco for the benefit and information of members and other-residing in the City and County of San Francisco and for the facilitation of business with the City and County of San Francisco, and no intention has ever existed to violate the interstate commerce law or the interstate shipment from other states or from foreign nations to the State of California of any building materials or supplies of any kind. That said permit system is operated by said Builders' Exchange for the purpose of making effective its rule and regulation in support of the open shop plan of doing building work. That under the rules and regulations of said Builders' Exchange its members were required to operate upon the open shop plan as hereinbefore defined, and, as a means and method of making effective said open shop plan in San Francisco, said Builders' Exchange issued certificates or permits to persons doing building work or repairing work in San Francisco, thus enabling the members of the Builders' Exchange of San Francisco to know before making any contracts with such persons whether or not they were operating upon the open shop plan. That said permits were issued solely for the purpose of regulating open shop labor conditions upon the buildings of San Francisco and have nothing to do whatsoever with interstate trade or commerce.

Affiant further alleges that at no time has any person ever been refused a permit on account of the employment of a union foreman, and at no time has any person ever been refused a permit on account of having more than fifty per cent union men working for them. But, on the contrary, the sole thing sought to be accomplished by the Builders' Exchange and the builders of San Francisco in this connection is a condition that will permit a non-union man to work in the building crafts of San Francisco if he be competent and [fol. 629] desirous of work.

That said open shop policy was duly and regularly made the active policy of said Builders' Exchange, and of each and all of the members thereof, by resolution duly and regularly adopted in June, 1921. And each and all of the members of said Builders' Exchange were obligated and pledged themselves to observe said open shop rules.

That said Builders' Exchange is composed of over one thousand members who are engaged in various parts of the general building industry, and among said members are and were, ever since said time, A. Knowles; MacGruer & Simpson; Peter Bradley; Francis O'Reilly; Henry Cowell Lime & Cement Co.; Pacific Portland Cement Co.; Crane Company; Holbrook, Merrill & Stetson; R. W. Kinney; George H. Tay Co.; and many other companies.

That in September, 1921, the large strike which involved all the building trades unions, was almost completely terminated, most of

the unions, except the Granite Cutters', going back upon the open shop plan. Thereafter, however, the bricklayers struck and refused to work upon the open shop plan. During almost the entire year of 1922 the Plumbers' Union struck and refused to work upon the open shop plan and tried to prohibit others from working thereon. The Plasterers' Union have struck several times since 1921.

Affiant avers that despite the fact that the men are being paid good wages and are working an eight hour day under good working conditions, and with continuous employment, and are otherwise contented, that certain labor leaders are constantly agitating and threatening strikes and constantly trying to get their men to go out on strike. That the union men are thoroly organized, and the only way in which their employers can defend and protect themselves is [fol. 630] by an equal organization such as the Builders' Exchange in which the employers on their part agree to stand with one another to resist the unlawful and unjust demands of the union men.

That one of the means voluntarily adopted by the members of the Builders' Exchange themselves in order to make effective their organization against the attacks upon the open shop plan has been the permit system hereinbefore referred to. This permit system applies to and involves only cement, lime, plaster, rock, sand, gravel and clay products, and nothing else. In creating and maintaining this permit system over these commodities said Builders' Exchange have deliberately and advisedly excluded from any permit requirement, lumber, steel, hardware, paints, plumbing supplies, lath, wallboards and glass. The materials which were put under the permit system and for which the members of the Builders' Exchange voluntarily resolved to require of each other permits, were selected so as carefully to avoid any interference with interstate commerce as practically all the cement used in California is manufactured in California. Nearly all of the lime used in California is manufactured and made into lime mortar in California. All of the rock, sand and gravel and California products used in and around San Francisco are manufactured in the State of California. And practically all of the plaster used in and around San Francisco is brought into San Francisco either by the manufacturing companies themselves or by local dealers, and in being brought in is shipped to said manufacturers and local dealers, consigned to them and run into their salesrooms and warehouses and commingled with other property of said manufacturers and dealers, and thereupon becomes intrastate property and ceases to be interstate property. That, on the other [fol. 631] hand, the very reason that lumber, steel, hardware, paints, plumbing supplies, lath, wallboards and glass were never put under the permit system was to avoid any possibility of interfering in any way with interstate commerce as most of the lumber used in San Francisco comes from other states or is shipped by ocean to San Francisco. Practically all the steel, hardware, paints, lath, wallboards and glass are manufactured and shipped from other states to this state, and therefore were deliberately and advisedly excluded from the permit system.

Affiant further alleges that he recalls the incident of the charges being preferred against W. C. Reveal, whose affidavit on behalf of the United States is on file in the above-entitled action. Said Reveal was and is a member of the Builders' Exchange. Complaint was made that he maintained warerooms and salesrooms in San Francisco from which he shipped and sold goods to representatives or confederates of the union men on strike without obtaining a permit therefor. Thereupon charges were filed against him in January, 1923, and he appeared before the Trial or Grievance Committee of the Builders' Exchange in response to said charges. That at said trial lengthy discussions were held, and the said Reveal claimed that he was the agent of the Tacoma & Roche Harbor Lime Co., shipping lime from the State of Washington to the port of San Francisco, and that these shipments of lime so made by him were made directly to purchasers and did not go into any local wareroom or salesrooms, and the original packages were not broken or changed, and therefore that he, the said Reveal, believes that said lime so shipped in by said Tacoma & Roche Harbor Lime Co. was being shipped in interstate commerce and any attempt to impose restrictions upon its disposition would be in violation of the law, whereupon the Builders' Exchange having been so advised that said shipments were in interstate [fol. 632] commerce, stopped all further proceedings against said Reveal, and said Reveal has not been further or in any other manner prosecuted or complained of or against, altho the officers of the Builders' Exchange have known, and said Reveal has frankly told them that he has shipped frequently and constantly in interstate commerce the lime of said Tacoma & Roche Harbor Lime Co. to people who were associates or confederates or representatives of the striking union men in San Francisco. That these proceedings had nothing to do with the cause of action instituted by the United States of America versus the Industrial Association and others, as they took place in January and February of 1923, long before the commencement of this action and at a time when it was not known or expected that any such suit would ever be begun. And said proceedings against said Reveal were stopped merely because of a desire on the part of the Builders' Exchange and others to avoid any possible interference with interstate commerce. That notwithstanding the fact that said Reveal and the said Tacoma & Roche Harbor Lime Co. have for the last two years or more been selling in interstate shipments without permits, no attempt has been made to interfere with them, to boycott them, or to hamper them; but upon the contrary, they have had the fullest facilities of the Builders' Exchange and are selling to members regularly of the Builders' Exchange.

So far as the affidavits of C. B. Rogers and Gray Thorning Lumber Company are concerned in regard to shipments or refusal to ship Sandusky Cement product from Cleveland, Ohio, to the Gray Thorning Lumber Company, this affiant alleges that he knew and does know that said Sandusky Cement Company had and was shipping cement to said Gray Thorning Lumber Company without permits; but, notwithstanding that fact, no charges of any kind have

[fol. 633] ever been preferred or instituted against the Sandusky Cement Company for violating the rules of the Builders' Exchange in selling the Gray Thorning Lumber Company without a permit, and no attempt has been made to interfere with them, nor to boycott them, nor harass them, nor hamper them.

But it is true that affiant as Secretary and General Manager of the Henry Cowell Lime Cement Co., which was handling the product of the Sandusky Cement Company in the city of San Jose, did threaten to and would have discontinued the handling of the product of said Sandusky Cement Company had the Sandusky Cement Company continued to ship its product to Gray Thorning Lumber Company in Redwood City, San Mateo County, and said Gray Thorning Lumber Company had diverted the entire carload shipment without even unloading it at its own warehouse to the San Jose field of said Henry Cowell Lime & Cement Co.

Affiant has read the affidavit of Walter B. Lomax of the John R. Steffens Lomax Co., agents for the Best Bros. Keene's Cement Company of Kansas, together with the correspondence and copies thereof attached to said affidavit. Affiant avers that no permit was ever required by the Builders' Exchange of said Best Bros. Keene's Cement Co. or of said John R. Steffens Lomax Co. And affiant is informed and believes, and therefore states the fact to be, that no shipment of either of said last two firms was made conditioned upon obtaining any permit, and the affidavit of said Walter B. Lomax discloses that fact. The cement sold by said two firms is a special kind of waterproof cement and is not the ordinary cement used in ordinary building and road construction work, but is cement shipped in comparatively limited quantities, and comes from without the State of California and for that reason the Builders' Exchange and the members thereof have never required permits therefor.

[fol. 634] It is true that affiant, together with other regular building material dealers, did present to said Best Bros. Keene's Cement Company of Kansas, business and economic reasons why they should not sell their materials to the Golden Gate Building Material Company. These reasons were reasons that prompted one or two other building material houses complaining also. Several San Francisco building material houses were handling the product of Best Bros. Keene's Cement Company, and in handling their product they resold to consumers, to wit, plastering contractors, at a rate that would not give any one plastering contractor a better price than another. The Henry Cowell Lime & Cement Co., the Atlas Mortar Co., and one or two other companies maintain plants here and the sales distributing forces, and spend much money in pushing goods thru the trade. Five plasterers organized a corporation known as the Golden Gate Building Material Company for the purpose merely of buying plaster for themselves, and not for the purpose of going into the building supply business as such. They sought with the aid of this corporation to buy at dealers' prices building material which they resold to themselves, thereby gaining a price advantage over all the other plasterers in San Francisco, numbering probably thirty to forty.

This caused dissension among the other thirty or forty plasterers who variously threatened the local supply houses that if they sold to these plasterers thru their corporation at a dealers' price, which was a better price than they could get, said other thirty or forty plasterers would look elsewhere for their materials. The entire dealings and correspondence between affiant and said Best Bros. Keene's Cement Company dealt with this phase and had nothing to do with obtaining permits or asking them not to ship goods in here to buyers who could [fol. 635] not obtain permits. Upon the contrary, the officers of the Builders' Exchange have known that said Best Bros. Keene's Cement Company has been constantly and regularly selling in the local market without obtaining or being asked to obtain permits and their sales have been welcomed, and no attempt has been made to interfere with them or to persuade them not to do so; but, indeed, the members of the Builders' Exchange have themselves been glad to purchase their product.

That wallboards and laths of all kinds, as well as plumbing materials, were never subjected to permits at any time nor were permits at any time ever required for their sale or delivery.

That affiant became interested in the struggle in the building trades in San Francisco, first, as Chairman of the Conference Committee of the Builders' Exchange, and later, during the years 1922 and 1923, as President of the Builders' Exchange, because of his own knowledge he found that building operations were being hampered in San Francisco because a sufficient supply of mechanics could not be obtained — account of the Union restrictions that none but Union men could be employed on building construction, and because of the further fact that the cost of building had been greatly advanced on account of the jurisdictional restrictions insisted on by the Unions.

That affiant knows of his own knowledge where non-union men came to San Francisco who did not care to join unions and were not allowed to work in this city and were compelled to move on to other localities such as Los Angeles and Long Beach.

That since the inauguration of the American Plan in San Francisco, that many mechanics who did not desire to join labor unions have come to San Francisco with their families and have settled here, and made good citizens, largely increasing the number of mechanics [fol. 636] available to work on our fast growing building program. As an example, where under union conditions there were something like 300 plasterers in San Francisco, there are now some 700 or 800 employed, and it is a matter of open comment and notoriously known that under the American plan the building program has very generously advanced in San Francisco as evidenced by building permits issued.

That the sole object of the Permit System of the Builders' Exchange at all times has been to make it possible for non-union men to seek and receive employment in the City and County of San Francisco, and that at no time has the Builders' Exchange or its members intended or desired to interfere in any way with Interstate commerce, but on the contrary, that owing to the vastly increased building program under the American Plan that the receipts and sales of inter-

state products of all kinds has largely increased many fold in the City and County of San Francisco.

That the American Federation of Labor thru its Building Trade Departments and allied International Unions, has at all times since the adoption of the American Plan in the building industry in the City and County of San Francisco by propaganda, circulars, and advertising attempted to keep its members from coming to San Francisco to seek employment on account of the adoption of the American plan, and thereby attempted to curtail the supply of mechanics coming to San Francisco, and that the same agencies have also on many occasions shipped their members out of the city of San Francisco, still further curtailing the supply of competent building mechanics in the City and County of San Francisco.

AFFIDAVIT OF WALTER JAMIESON ON BEHALF OF DEFENDANTS

Walter Jamieson, being first duly sworn, deposes and says:

That he now is and during all times herein mentioned has been engaged in the whitewashing business in the City and County of San [fol. 637] Francisco, State of California, and in connection with such business uses lime.

Affiant has read the affidavit of W. C. Reveal, dated September 27, 1923, and filed in the above-entitled cause, and in particular that portion thereof in which said Reveal deposes or attempts to depose that this affiant with Alexander Mennie and Thomas Campbell made certain threats against the said Reveal or against the Tacoma & Roche Harbor Lime Company. This affiant alleges that he never has either in company with said two men or with any other person or alone, made any threats of any kind to the said Reveal or to the said Tacoma & Roche Harbor Lime Company.

Affiant alleges that he has never as a member of a committee with said Mennie and Campbell, called upon and interviewed said Reveal for any purpose whatsoever. According to affiant's best recollection and belief, the only conversation this affiant ever had with said Reveal concerning the industrial disputes and the prosecutions arising therefrom was in the late part of 1921 or 1922, the date whereof this affiant does not recall, except that it was about the time that criminal proceedings were instituted before Police Judge Sylvester McAtee in the City and County of San Francisco, against the Builders' Exchange and others. At said time this affiant had a very short, perfunctory conversation with said Reveal, and practically all that this affiant now recalls of it was the said Reveal's statement that his company was also in the possession of the legal opinion from his own lawyers in the matter.

Affiant also denies that he has at any time, or at any place, ever made any threats against the said Reveal or against the said Tacoma & Roche Harbor Lime Company, or has ever used any language which could be distorted into implying a threat.

[fol. 638] Affiant years ago used lime manufactured by the Tacoma & Roche Harbor Lime Company, of which said Reveal is agent, but has not used any of the product of the said Tacoma & Roche Harbor Lime Company for more than six years, and the discontinuance by affiant of the lime of said company was long prior to any of the industrial troubles referred to in the above-entitled suit and having no connection therewith whatever.

AFFIDAVIT OF LEON G. LEVY ON BEHALF OF DEFENDANTS

Leon G. Levy, being first duly sworn, deposes and says:

That he now is and during all times herein mentioned has been engaged in the wholesale business of laces, handkerchiefs, etc., in the City and County of San Francisco, State of California.

That he is well acquainted with Paul I. Fagan, and accompanied said Paul I. Fagan to the office of W. K. Hughes some time during the summer or fall of 1922, and was present with Paul I. Fagan at said time. At said time and in said interview no threats of any kind were made by affiant or said Paul I. Fagan against the said W. K. Hughes. The Industrial Association and the industrial conditions of San Francisco were discussed at that time; but neither the said affiant, nor the said Paul I. Fagan, ever offered to buy any contract of said W. K. Hughes as set forth in the affidavit of said W. K. Hughes filed in the above entitled action. And at no time did said affiant or said Paul I. Fagan make any statement to said W. K. Hughes to cause him to infer that unless shipments of materials which said W. K. Hughes was bringing into San Francisco, were sold to affiant, or to Paul I. Fagan, or to the Industrial Association, that it would be impossible for said W. K. Hughes to get delivery thereof. Upon the contrary, at said time said W. K. Hughes [fol. 639] undertook to, and did interview certain plasterers connected with the Golden Gate Building Material Co. After said interview said W. K. Hughes asked this affiant if this affiant would not accompany said W. K. Hughes on a visit to A. Knowles and others connected with said Golden Gate Building Material Co. That the said A. Knowles was desirous of presenting certain problems of some of the boss plasterers. That said interview was arranged entirely by said W. K. Hughes, and this affiant accompanied said W. K. Hughes and had a talk in the presence of said W. K. Hughes with A. Knowles and other plasterers connected with the Golden Gate Building Material Co. Said plasterers explained to this affiant that they were in sore difficulties thru a desire to work in San Francisco on the open shop plan. They found that the unions would boycott them on all work that they had outside of San Francisco. Said plasterers informed affiant that some of them had big jobs in Los Angeles, Sacramento, and other cities of the State of California, and elsewhere outside of San Francisco.

That the Plasterers' Union had threatened to strike on all the

work of said five plasterers connected with said Golden Gate Building Material Co. if they employed any non-union plasterers in San Francisco. That said five boss plasterers—there were five boss plasterers, as affiant recalls, who were interested in said Golden Gate Building Material Co.—would be anxious as members of the Builders' Exchange to do their plastering work in San Francisco on the open shop plan, but they feared violence and financial ruin if they did so on account of the threats of the Plasterers' Union. Thereupon and at the request of said five boss plasterers, this affiant arranged conferences with the officials of the Industrial Association of San Francisco.

A number of such conferences were held which ran over a period [fol. 640] of about ten days or possibly two weeks, as a result of which the Industrial Association entered into a written contract with a large number of boss plasterers or master plasterers of the City and County of San Francisco, including the five plasterers connected with the Golden Gate Building Material Co. Under the terms of said written agreement all said signatory plasterers agreed that they would do all their work on the open shop plan, and the Industrial Association agreed that in the event of any strike or labor difficulty on account of said boss plasterers working upon the open shop plan, that the Industrial Association of San Francisco would protect them, would furnish them if need be with workmen, and would indemnify them for any labor loss that any of said plasterers might sustain on account of any strike. That said contract was executed on or about October 27, 1922, and was signed, among others, by said A. Knowles, MacGruer & Simpson, Peter Bradley and Francis O'Reilly; and in fact, as affiant is informed and believes and therefore states the fact to be, by ninety-five per cent of the boss plasterers of San Francisco.

That affiant is informed and believes and alleges the fact to be that ever since all of said master plasterers have done all their plastering work in San Francisco on the open shop plan.

Affiant avers that said original interview between this affiant and said boss plasterers and the subsequent conferences were initiated by and at the suggestion of said W. K. Hughes, and that said W. K. Hughes complained to affiant that the five plasterers connected with the Golden Gate Building Material Co. refused to accept the 1,500 barrels of lime that the Golden Gate Building Material Co. had ordered of said W. K. Hughes because of the fact that they could [fol. 641] buy said lime at a cheaper price in the market of San Francisco than the said W. K. Hughes was contracting to furnish it for.

That this affiant admitted to said W. K. Hughes that it was true that in all probability said five plasterers connected with said Golden Gate Building Material Co. might have lived up to their contract with the said W. K. Hughes and purchased said lime, and that he, the said affiant, would present said matter to the Industrial Association of San Francisco with the plea that the public spirit and interest of said W. K. Hughes in arranging these conferences should not

work out in such manner as to cause the said W. K. Hughes financial loss. Said W. K. Hughes thereupon wrote a letter to affiant, a copy of which is attached to the affidavit of said W. K. Hughes, which letter affiant presented to the Industrial Association.

Sail affiant alleges that as the result of the appeal made by him to the Industrial Association of San Francisco setting forth the facts herein contained, said Industrial Association of San Francisco paid said W. K. Hughes said sum of \$240.00.

But affiant further avers that before said money was paid and before said letter was written that said Golden Gate Building Material Co. had itself cancelled said contract with W. K. Hughes. And, indeed, affiant is informed and believes, and has been told by the said W. K. Hughes that said Golden Gate Building Material Co. verbally indicated its intention to cancel said contract about the 12th day of October, 1924.

Affiant avers that the payment of said money was not requested, nor was the same paid to divert or prevent any interstate shipment from coming into the State of California, but only for the reasons herein stated.

Affiant has been informed by said W. K. Hughes that the said W. K. Hughes did not ask the Golden Gate Building Material Co. to be [fol. 642] relieved from his contract for said 1,500 barrels of lime, but upon the contrary, has been told verbally and in writing by said W. K. Hughes that the Golden Gate Building Material Co. itself cancelled the contract, and because of this cancellation by the Golden Gate Building Material Co. did the said W. K. Hughes seek to be protected against his own loss.

Affiant has further been informed by said W. K. Hughes that said W. K. Hughes was unable to and would have been unable to make delivery of said lime in any event because of the breakdown of the lime plant from which he was purchasing said lime. But affiant alleges that he made the plea for the payment by the Industrial Association of said sum of money for the reasons hereinbefore set forth, and none other.

Affiant is informed and believes that ever since the signing of said agreement between the Industrial Association and said master plasterers hereinbefore referred to, all of them had operated and done work upon the open shop plan, and that the Industrial Association has not merely paid this \$240 00, but has paid large sums of money, running into the thousands of dollars, to the various master plasterers on account of labor losses claimed to have been sustained by them during strikes; and that said A. Knowles and others have at times acted upon committee or committees for said master plasterers in the adjustment of various claims of master plasterers.

That the entire rarrangement set forth in this affidavit was an arrangement that would financially protect the boss plasterers against the harassment, violence, and financial loss that the striking plasterers' union might or could inflict upon them. That it was recognized that some of these plasteres had jobs in other cities in which they had large sums of money involved. They could not cancel their [fol. 643] contracts, nor was it desirable for them to do so. On the

other hand, outside of San Francisco and Oakland said master plasterers would be at the mercy of the unions and the union officials, and these entire arrangements were made so that master plasterers might have as a protection to them the influence and the financial support of the Industrial Association as said Industrial Association did not feel that the entire burden and the entire risk and loss of working under open shop conditions should be borne by said boss plasterers, but that the community as represented by the Industrial Association should pay therefore out of the common fund which had been raised by the Industrial Association

AFFIDAVIT OF WALTER B. LOMAX ON BEHALF OF DEFENDANTS

Walter B. Lomax, being first duly sworn, deposes and says:

That he is the Walter B. Lomax who swore to an affidavit on behalf of the government on the 15th day of October, 1923, to which was attached a complete file of correspondence between John R. Steffens Lomax Company and The Best Bros. Keene's Cement Company.

That the firm of John R. Steffens Lomax Company took over the representation of the business of said Best Bros. Keene's Cement Company in May, 1922, at which time so far as affiant could find out said Best Bros. Keene's Cement Company was doing very little business in and around San Francisco, practically all of it being done with one small dealer in the city of San Francisco. That since said time the business of said Best Bros. Keene's Cement Company has constantly increased until at the present time a considerable volume of business of said Best Bros. Keene's Cement Company is being done in and around San Francisco. According to affiant's best information and belief the business today is fully five times as much as when [fol. 644] said John R. Steffens Lomax Company first took it over.

Upon one occasion, to wit, May 18, 1923, said John R. Steffens Lomax Company sent an order for three different shipments of Keene's cement to said Best Bros. Keene's Cement Company to be shipped to San Francisco or vicinity. One of said orders had attached to it, or referred to the permit number 37431, which was a Builders' Exchange permit. Said permit was voluntarily brought to said John R. Steffens Lomax Company by George MacGruer of MacGruer & Simpson, contracting plasterers, and the said John R. Steffens Lomax Company never asked for nor was compelled to ask for said permit. At no time previously and at no time since has any condition been imposed requiring any one to furnish a permit before said John R. Steffens Lomax Company would ship to them any of said Best Bros. Keene's cement; and upon no occasion was any threat made to us concerning our shipping said Keene's cement in without permits.

Keen competition exists in the plastering industry between the users of hardwall plaster and the users of lime guaged Keene, the latter substance being a material frequently used instead of hardwall

plaster. Affiant knows that in pushing the sale of Keene cement he had the aggressive competition of the manufacturers and sellers of hardwall. That aside from said competition of the sellers of said hardwall, affiant has not been, nor has the firm of which he is a co-partner ever been interfered with in any shipment of any Keene's cement from outside of the State of California or into the State of California; nor has he been threatened in any manner if he or his firm shipped, and at no time by threat, persuasion or intimidation has any effort been made to force affiant to sell only upon terms.

[fol. 645] AFFIDAVIT OF CHARLES R. MCCORMICK ON BEHALF OF DEFENDANTS

Charles R. McCormick, being first duly sworn, deposes and says:

That he now is and during all times herein mentioned has been President of McCormick Steamship Company, which company is engaged in the steamship business on the Pacific Coast.

The attention of affiant has been called to an affidavit of A. Knowles, dated October 15, 1923, and filed in the above-entitled cause, in which the said A. Knowles says that the Golden Gate Building Material Co. purchased from the Three Forks Portland Cement Company a certain amount of plaster which was to be shipped by railroad to Portland, Oregon, and then carried by ship to the city of San Francisco, and there received by the Golden Gate Building Material Company, to whom said materials were to be consigned.

Said A. Knowles further says:

"Shortly after making said agreement with the said Three Forks Portland Cement Company, said Golden Gate Building Material Company was notified by the McCormick Steamship Company of an increase on said freight, and was advised by Mr. McCormick of said McCormick Steamship Company that such increase in rates was necessary for the reason that the Golden Gate Building Material Company was not a member of the Builders' Exchange, and if such steamship company transported said building materials for and to the said Golden Gate Building Material Company said Steamship Company would lose transportation business of certain business concerns who were in sympathy with the enforcement of what is known as the American Plan in said City of San Francisco."

This affiant denies that he or the said McCormick Steamship Company ever increased or threatened to increase the said freight rates mentioned by the said A. Knowles, or that he or it ever refused or threatened to refuse to ship any of its goods; and denies that the said affiant or said McCormick Steamship Company said that such increase or refusal was necessary for the reason that the Golden Gate Building Material Company was not a member of the Builders' Exchange, or for any other reason stated by said A. Knowles, or at all.

[fol. 646] AFFIDAVIT OF ALEXANDER MENNIE ON BEHALF OF DEFENDANTS

Alexander Mennie, being first duly sworn, deposes and says: I am a resident of the City and County of San Francisco, State of California, and during practically all of my life have been engaged in the plastering business, and for many years last past as a master plasterer or plastering contractor.

Up to 1921 the plastering business in San Francisco was practically entirely unionized and every plastering contractor had to abide by the rules of the union or he would have his work tied up by strikes. I know of the following restrictions and rules formerly imposed by the Plasterers' Union:

One rule provided that only one apprentice would be allowed in each shop regardless of the number of men employed in the shop or the size of the shop, and no additional apprentice would be admitted unless the first apprentice had served two years.

In 1915 when work was scarce and men plentiful, an agreement was made between the Master Plasterers and Plasterers' Local #66 that they work five (5) days a week instead of five and one-half ($5\frac{1}{2}$) days to give as many mechanics work as possible. When work started again the Union refused to work Saturday unless they got double time. Master Plasterers were forced to pay double time for any part of Saturday worked until the American Plan went into effect in 1921.

Restriction on cementing with plaster gun; The gun is made up of a compressed air machine and a hose with a spray nozzle.

A much poorer mixture of sand and cement can be used in this manner than a plasterer could work with his tools, say five (5) of sand to one of cement as against two (2) to one (1) in the case of the plasterer, without detriment to the job.

The gun is also superior in that it puts the material on with much [fol. 647] more force, therefore the density is greater and the material can be put on to any desired thickness by repeating the operation at intervals.

It is only necessary to have one plasterer to straighten the work as it goes on. A laborer can handle the nozzle and an engineer the compressed air machine, both of whom receive much less wages than the plasterer.

When gun was first put into practice, unions would not work with it. Finally the "International" recognized the tool and sanctioned its use. Local agitators were against it and endeavored to discourage its use by slowing up the work.

AFFIDAVIT OF KARL G. NEUMAN ON BEHALF OF DEFENDANTS

Karl G. Neuman, being first duly sworn, deposes and says: I am and during all times herein mentioned have been a resident of the City and County of San Francisco, State of California, and

that during most of my life, I have been in the plumbing business; for a number of years last past I have been a contracting plumber.

The plumbing business in San Francisco up to 1921 was practically entirely unionized, and thru the economic control which that condition gave to the union it forced certain rules upon the plumbing industry.

Among these rules was a time rule; that is to say, a rule of the union which provided that regardless of how little time a job might take, a minimum time pay must be paid for it.

Following were some of these rules: A cast-iron vent and durham would be figured four days even tho it might be done in two days; hot and cold water and gas installation two and one-half days; iron stone to curb, one-half day; installing fixtures, one day; installing plumbing in a two-flat job, fifteen days. This meant that this full amount of time would be charged as a minimum for the wages of men even tho they could and frequently did complete the work in [fol. 648] a much shorter space of time.

A laborer in a shop was not permitted to cut pipe or put on fittings, nor was an apprentice permitted to install fixtures. An apprentice was not permitted to do any work unless a journeyman was present. The business agent of the union would come on the job and order more men placed on, and would himself send them, altho the contracting plumber might not need him and might not want him. A complete record of every job was turned into the union.

AFFIDAVIT OF W. P. PAYNE ON BEHALF OF DEFENDANTS

W. P. Payne, being first duly sworn, deposes and says:

I was a witness on oral examination in the above-entitled case on the morning of October 9th, 1923. I was brought on subpoena requiring me to come and bring with me all letters and files which I had in my possession. I was asked certain questions regarding a twenty ton shipment to Alexander Gray which I could only answer on the witness stand from best recollection. On leaving the courtroom, however, I examined my correspondence and found the following telegrams sent respectively by me to my company, and my company to me:

"San Francisco, July 3, 1922.

"Jumbo Plaster & Cement Co., Sigurd:

Why don't you answer my wire. How many Gray or Gray Thorn-ing orders have we on file, and give me destination. Rush Cowell order.

W. P. Payne."

"Sigurd, July 4, 1922.

W. P. Payne, San Francisco, Cal.:

One old order here for A. Gray for San Jose. Telegraph order just received for 120 tons for Gray. No destination stated. One forty ton order on file for Gray Thorning Co. destination Redwood City. I promised shipment on this today but cannot load until Wednesday. Tried from 7 to 9:30 Saturday to get you but failed.
Jumbo Plaster & Cement Co.

[fol. 649]

"San Francisco, July 4, 1922.

"Jumbo Plaster & Cement Co., Sigurd Co.:

Ship at once one car to A. Gray San Jose also one car to Gray Thorning Company at Redwood City. Then make no further shipments only for Cowell until you hear from me.

W. P. Payne."

On July 1st 1922 I made an arrangement with the Henry Cowell Lime & Cement Company under which they handled exclusively for northern California all plaster products of the Jumbo Plaster & Cement Co. All orders of Gray and Gray Thorning Company on file on the date of my making this arrangement with Henry Cowell Lime & Cement Company were thereafter filled on my order, which cleaned every order that was on file at the office when I left. The twenty ton order which was referred to in my oral testimony was really a one hundred and twenty (120) ton order and not a twenty (20) ton order. This was placed on July 3rd or 4th 1922, after I had made my arrangements with the Henry Cowell Lime & Cement Co. The order was forwarded by Alexander Gray to the home office of my company in Utah during my very visit in San Francisco when I saw so much of him. It was placed without my knowledge and without said Alexander Gray giving me any indication that he had forwarded such an order. The Jumbo Plaster & Cement Co. has never at any time, so far as my knowledge goes, ever been on the unfair list of the Builders' Exchange; nor have any of its products been placed there; nor has any notice been posted to that effect in the assembly-room of the Builders' Exchange in San Francisco. I have never heard of any boycott by the members of the Builders' Exchange of the Jumbo brand of plaster; nor have I ever heard of said members refusing to purchase its products.

AFFIDAVIT OF W. C. REVEAL ON BEHALF OF DEFENDANT

W. C. Reveal, being first duly sworn, deposes and says: That he has heretofore made two affidavits on behalf of the Complainant [fol. 650] in the above-entitled action. That he desires on behalf of the defendants to make the following additional affidavit. Affiant refers to said previous affidavits as to his relationship as General Sales Agent of the Tacoma & Roche Harbor Lime Company, a

corporation, during all the times set forth in said affidavits and in this affidavit.

This affiant further alleges that as agent for said Tacoma & Roche Harbor Lime Company, he has during all of said periods, sold lime without restriction to any dealer or purchaser, whether that dealer or purchaser had permits or did not have permits. The product of the Tacoma & Roche Harbor Lime Company is manufactured in the State of Washington and is shipped down to the Port of San Francisco, and affiant and said Tacoma & Roche Harbor Lime Company have never refused to sell to anyone on account of the proposed purchaser not having a permit of the Builders' Exchange. The sales of said Tacoma & Roche Harbor Lime Company have been without restrictions or conditions of any kind, save and except that said Tacoma & Roche Harbor Lime Company did have a contract with the Atlas Mortar Company of San Francisco, under the terms of which contract said Atlas Mortar Company was entitled to the first call on all lime produced by the Tacoma & Roche Harbor Lime Company and shipped to California up to thirty-five hundred (3,500) barrels per month, and after said supply of thirty-five hundred (3,500) barrels per month had been furnished, all excess was sold to any and all purchases up to the limit of capacity of said Tacoma & Roche Harbor Lime Company. During the last two (2) years, the shipments brought in by said Tacoma & Roche Harbor Lime Company have averaged from five thousand (5,000) to sixty-five hundred (6,500) barrels per month, and all in excess of thirty-five hundred (3,500) barrels per month have been [fol. 651] disposed of freely on the open market to all purchasers, regardless of the fact whether they have permits or not. That among such purchasers to whom affiant has sold without permit have been Gordon Chamberlain and the Civic Center Supply Company. That in regard to the shipment referred to in the affidavit of Gordon Chamberlain, this affiant told said Chamberlain that the two hundred and fifty (250) barrels of lime in question belonged to the thirty-five hundred (3,500) barrel allotment of the Atlas Mortar Company, and that was the only reason that that particular shipment was not delivered to said Gordon Chamberlain.

AFFIDAVIT OF JOHN R. STEFFENS ON BEHALF OF DEFENDANTS

John R. Steffens, being first duly sworn, deposes and says:

I was formerly a member of the firm of John R. Steffens Lomax Co., representatives of the Best Bros. Keene's Cement Company of Kansas, and a partner of Walter B. Lomax, whose affidavit is already on file.

I recall personally visiting the offices of Max J. Kuhl in company with a man by the name of Barrymore representing the Golden Gate Building Material Company. The time of the visit I do not now recall, but it was somewhere in the month of June of 1923.

Our firm was handling Best Bros. Keene's cement, which is ordi-

narily used in connection with lime mortar. The mixture resulting therefrom is used to plaster walls of buildings, and is a material that is in active keen competition with hard-wall plaster, which is also used for like purposes. For a long time past there has been keen trade competition between the makers and sellers of hardwall and the makers and sellers of lime mortar used with Keene's cement.

Our firm heard reports of some difficulty of the Golden Gate [fol. 652] Building Material Company, and in company with Mr. Barrymore I visited Mr. Kuhl at Mr. Kuhl's office. We asked Mr. Kuhl if the report was true that there was objection to selling to the Golden Gate Building Material Company, and Mr. Kuhl advised us that there was none of any kind; that there was a trade war or competition on between the users of various kinds of materials which the Industrial Association was not and never was interested in and would not take an interest in, and that all shippers of all kinds of materials were just as free to sell to the Golden Gate Building Material Company as to any other concern. The argument had been advanced to our firm that for business reasons we should not sell to the Golden Gate Building Material Company because they were not an actual dealer but merely a concern, organized for the purpose of buying materials for their own members. Mr. Kuhl likewise informed us that the Industrial Association was not interested and had no concern with any such business policy; that those matters must be determined by each particular firm. We were assured that no attempt had been made or would be made to interfere with or hinder the sale of any commodities to the Golden Gate Building Material Company.

AFFIDAVIT OF J. C. STRITTMATTER ON BEHALF OF DEFENDANTS

J. C. Strittmatter, being first duly sworn, deposes and says:

That he is now and during all times herein mentioned has been Freight Traffic Manager of McCormick Steamship Company, a corporation engaged in the steamship business on the Pacific Coast and in carrying freight by water from port to port and along the Pacific Coast.

Affiant has had his attention called to the affidavit of A. Knowles, signed October 15, 1923, and filed in the above-entitled cause, and in particular to the following portion thereof:

[fol. 653] "Shortly after making said agreement with the said Three Forks Portland Cement Company, said Golden Gate Building Material Company was notified by the McCormick Steamship Company of an increase on said freight, and was advised by Mr. McCormick of said McCormick Steamship Company that such increase in rates was necessary for the reason that the Golden Gate Building Material Company was not a member of the Builders' Exchange, and if such steamship company transported said building materials for and to the said Golden Gate Building Material Company said

steamship company would lose transportation business of certain business concerns who were in sympathy with the enforcement of what is known as the American Plan in said city of San Francisco."

Affiant alleges that said McCormick Steamship Company has never at any time for any reason, or at all, increased freight rates, particularly on any commodity of Golden Gate Building Material Company or any other concern. Affiant alleges that said McCormick Steamship Company never refused freight of said Golden Gate Building Material Company or of any company that was selling or sending freight to said Golden Gate Building Material Company either for the reasons alleged by said A. Knowles, or for any other reason, or at all.

On the contrary, this affiant alleges that in the year 1922 said McCormick Steamship Company did carry large quantities of plaster and materials consigned to and for the Golden Gate Building Material Company, said freight and consignments being carried from Portland, Oregon, or the northwest territory, to the port of San Francisco.

Said McCormick Steamship Company never was requested or threatened or asked by the Builders' Exchange or any other person either to increase freight rates against any particular consignee or to refuse to carry freight for any particular consignee, and never did. But on the contrary, during the period of 1922 referred to by said A. Knowles, did carry a large quantity of freight from Portland, Oregon to the city of San Francisco, much of said freight being shipped by rail to Portland from Montana.

[fol. 654] TESTIMONY OF HERBERT V. TOWLE ON BEHALF OF DEFENDANT

HERBERT V. TOWLE, being first duly sworn, deposes and says: That he is the assistant secretary of Pacific Portland Cement Company, Consolidated, a corporation, and has been such for two years; that he has been employed by said Pacific Portland Cement Company, Consolidated, all told for about six years.

Affiant has read the affidavit of A. Knowles, sworn to on October 9, 1923, and filed on said date in the above entitled cause. Said Pacific Portland Cement Company, Consolidated (hereinafter referred to as the Cement Company) furnished all the plaster ordered by said A. Knowles for the plastering of said Loew's and Golden Gate Theatres in the City of San Francisco, and no order of any kind of said A. Knowles for said theatres or either of them was refused or unfilled.

Said Cement Company deals in cement and plaster and other building materials. All of its cement is manufactured in the State of California. It manufactures its plaster in its own plant at Moundhouse, State of Nevada. The said Cement Company is a California

corporation, having its office and principal place of business in the City and County of San Francisco, in said state. In said city and county it maintains warehouses and general offices and salesrooms, and from said city and county its sales service and force operates. The customary way of handling its plaster in San Francisco is for said Cement Company to ship it from Moundhouse to itself in the City of San Francisco where the cars are unloaded and the plaster put in the warehouses of said Cement Company. Only in exceptional cases of an extremely large building is this practice ever departed from and goods shipped direct to a job. The usual practice is to sell out of the warehouses of said Cement Company, here in San [fol. 655] Francisco, which warehouse includes its own manufactured cement, which is manufactured in the State of California, and other building materials which it handles.

That during the early part of 1922 said A. Knowles was engaged in plastering the Golden Gate Theatre and Loew's Theatre in San Francisco, and that during said period was purchasing the plaster necessary therefor from the said Cement Company; that during said time the said Cement Company was shipping from its plant at Moundhouse, Nevada, to its warehouse in San Francisco, consigned to itself, various carloads of plaster for its own use in filling orders of its various customers; that from time to time it notified said A. Knowles of the arrival of certain carloads of plaster, and in accordance with this information, and in accordance with the requirements of said A. Knowles, as aforesaid, said A. Knowles from time to time placed certain orders for plaster with said Cement Company. At no time has said Cement Company ever shipped any carload of plaster from its plant at Moundhouse, Nevada, to said A. Knowles at San Francisco, but on the contrary at all times herein mentioned it has been the custom of said Cement Company to deliver from its warehouse in San Francisco, California, or from cars at its warehouse in San Francisco, such plaster as may have been required by said A. Knowles.

That from the 3rd day of January, 1922, to and including the 25th day of August, 1923, the said Cement Company has sold and delivered to the said A. Knowles various quantities of plaster in accordance with the requirements of said A. Knowles, and as ordered and purchased by said A. Knowles; and in this behalf this affiant denies that at any time after the 1st day of January, 1922, said A. Knowles has been unable as stated in his affidavit, to obtain from said Cement Company any plaster, or that said A. Knowles has not received any [fol. 656] plaster, but on the contrary the said A. Knowles did receive during the month of January, 1922, a total of 77¼ tons of plaster from the said Cement Company, and during the month of February, 1922, a total of 111-1/5 tons of plaster, and during the month of March, 1922, a total of 105¾ tons of plaster, and during the month of April, 1922, approximately 80 tons of plaster, and thereafter from time to time certain additional amounts of plaster in accordance with the orders and requirements of said A. Knowles to the said Cement Company for the same.

That said Cement Company has sold to said A. Knowles as recently

as within the last three or four months, plaster, and said Cement Company now is and for many months last past has been soliciting said A. Knowles to buy its plaster, and said Cement Company has repeatedly delivered to said A. Knowles hardwall and other plaster as the said A. Knowles called for the same.

It is distinctly and positively untrue that said A. Knowles has not been able to obtain any plaster from said Cement Company; but on the contrary said A. Knowles has been repeatedly asked to buy and use the plaster of said Cement Company; and indeed, on some big buildings in which the plaster of said Cement Company was specified in the specifications, said Cement Company has had great difficulty and sometimes has found it impossible to get him to buy the hardwall plaster of said Cement Company for use in said buildings.

That during a large part of the year 1922 there was an unprecedented building boom in northern California, and in particular in the cities of San Francisco and Oakland, and the plants of said Cement Company, as well as other companies, were behind in shipments, and during large portions of the time, unable to meet promptly the full shipments and full orders. That, notwithstanding this, said Cement Company did furnish said A. Knowles with all [fol. 657] the plaster he required and called for from its warehouse. That during the entire period of the boom which created said shortage, the policy of the said Cement Company was to serve its old customers so far as its supplies would permit before taking on outside business.

That affiant has read the affidavit of Z. T. Thorning sworn to October 8, 1923, and particularly that portion thereof in which said Thorning avers that about a year ago the Gray Thorning Lumber Company placed an order for a carload of plaster with said Cement Company, and in that behalf this affiant alleges that although the books of said Cement Company contain no record of any such order, that approximately one year ago there was a great increase in the demand for plaster and other building materials owing to the great increase in building activities in San Francisco and other portions of the State of California, and that the demands upon the said Cement Company for its plaster were greatly increased thereby and its supplies of plaster greatly reduced thereby to the extent that said Cement Company found itself unable to fill all orders which it received for plaster, and said Cement Company found it necessary to establish a custom to serve only its regular customers, that is to say, those who had been purchasing its products in the past, and only in exceptional cases to accept orders from other than its regular customers, and in accordance with this custom, and for the reason that the said Gray Thornton Lumber Company had for some time previous to a year ago, and ever since, has purchased its plaster from competitors of the said Cement Company, had the said Gray Thorning Lumber Company placed any order with the said Cement Company, the said Cement Company would have been obliged to notify the said Gray Thorning Lumber Company that

it was not in a position to accept or fill the orders then being placed [fol. 658] by the said Gray Thorning Lumber Company.

In reference to the affidavit of Gordon S. Chamberlin, sworn to October 8, 1923, affiant avers that during 1922 and 1923, the said Cement Company did not refuse to sell its plaster to the said affiant or to said Civic Center Supply Company, but on the contrary, during said years and at all times during said years said Cement Company sold through its warehouse in San Francisco, California, sundry and various orders of plaster and other building materials as required and ordered by said Gordon S. Chamberlin and the said Civic Center Supply Company.

[fol. 659]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE STATEMENT OF EVIDENCE

It is hereby stipulated by and between the complainant above-named and the defendants above-named that the evidence in the above-named matter is comprised of:

- (1) The affidavit of Grant R. Bennett.
- The affidavit of J. F. Cambiano.
- The affidavit of John Coefield.
- The affidavit of Ethel Lynn, with the Exhibits thereto attached.
- Two (2) affidavits of Frank C. McDonald.
- The affidavit of A. P. Entenza.
- The affidavit of George Hughes.
- The affidavit of John F. Houghey.
- The affidavit of A. Lettich.
- [fol. 660] The affidavit of N. H. McLean.
- The affidavit of A. J. Mooney.
- The affidavit of Frank D. Mullin.
- Three (3) affidavits of Thomas F. Rice.
- The affidavit of Sage Watson.
- The affidavit of J. E. Connell.
- The affidavit of Willis Polk.
- Two (2) affidavits of Gordon Chamberlin with the exhibits thereto attached.
- The affidavit of James A. Gray.
- The affidavit of Carl Jorgensen.
- The affidavit of H. W. Kage, with the exhibits thereto attached.
- Two (2) affidavits of A. Knowles.
- The affidavit of G. B. Pasqualetti.
- Three (3) affidavits of W. C. Reveal, with the exhibits thereto attached.
- The affidavit of Edward John Schneider.
- The affidavit of H. S. Wathen.

Two (2) affidavits of Z. T. Thorning.

The affidavit of Ernest G. Wentz.

Two (2) affidavits of W. K. Hughes, with the exhibits thereto attached.

The affidavits of O. C. Barrymore.

Two (2) affidavits of Walter B. Lomax, with the exhibits thereto attached.

Two (2) affidavits of Clinton B. Rogers, with the exhibits thereto attached.

The affidavit of Frank E. Knight, with the exhibits thereto attached.

The affidavit of Thomas J. Best, with the exhibits thereto attached.

Four (4) affidavits of W. H. George.

The affidavit of Max J. Kuhl.

The affidavit of C. W. Wold.

The affidavit of Francis J. Baker.

The affidavit of Andrew Dalziel.

The affidavit of William P. Goss.

The affidavit of C. J. Roddy.

Two (2) affidavits of Atholl McBean.

The affidavit of Warren Ryder.

The affidavit of E. T. Porter.

The affidavit of H. C. Marsh.

The affidavit of H. L. Knowles.

The affidavit of Edward H. Horton.

The affidavit of Charles M. Gunn.

Two (2) affidavits of Alexander Mennie.

The affidavit of Charles M. Cadman.

The affidavit of L. E. Crawford.

The affidavit of T. J. Campbell.

The affidavit of Clarence A. English.

The affidavit of Paul I. Fagan.

The affidavit of W. J. Feary.

The affidavit of Walter Jamieson.

The affidavit of Leon G. Levy.

The affidavit of Charles R. McCormick.

The affidavit of Karl G. Neuman.

The affidavit of W. P. Payne.

The affidavit of John R. Steffins.

The affidavit of J. C. Strittmatter.

The affidavit of Herbert V. Towle.

That all of said affidavits were signed and sworn to in the State of California except the affidavits of H. W. Kage and Clinton B. [fol. 661] Rogers, which were signed and sworn to in the State of Ohio, County of Cuyahoga, and the affidavit of Frank E. Knight and Thomas J. Best, which were signed and sworn to in the State of Kansas, County of Barber. All of said affidavits were introduced in evidence in lieu of the oral testimony of said affiants, and subject only to the objections which are hereinbefore set forth.

(2) The oral testimony of W. P. Payne, William J. Feary and Chris Peterson given at the time of the trial of said cause, which said testimony is reduced to narrative form and contains letters identified by said witnesses and introduced in evidence in Open Court, and stipulations entered into between complainant and defendants.

(3) Various stipulations entered into between the complainant and defendants, some of which stipulation contain exhibits.

(4) (a) A summary of the evidence in the action entitled, "The People of the State of California vs. William H. George, et al.," which said action was brought in the Superior Court of the State of California, in and for the City and County of San Francisco and is numbered on the records thereof as 12,796;

(b) The By-Laws of the Builders' Exchange of San Francisco and the Constitution and By-Laws of the Industrial Association of San Francisco;

(c) A summarized statement covering the creation and activities of the Board of Arbitration for the building industry in the City and County of San Francisco for the year 1921.

(d) Award and Report of Impartial Wage Board for San Francisco building industry.

[fol. 662] All of the above exhibits were introduced and admitted in evidence in the above-entitled cause by stipulation of counsel.

Dated February 15, 1924.

Henry A. Guiler, Spécial Assistant to the Attorney General; John T. Williams, United Sattes Attorney for the Northern District of California; Grove J. Fink, Spécial Assistant to the United States Attorney for the Northern District of California; James Raleigh Kelly, Spécial Assistant to the Attorney General; H. H. Atkinson, Spécial Assistant to the United States Attorney for the Northern District of California; Augustus T. Seymour, Assistant to the Attorney General, Attorneys for Complainant. Max J. Kuhl, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co.,

William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean. Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. Samuel G. Tomkins, Attorney for Industrial Association of Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose.

[fol. 663] We have examined the foregoing 589 pages, exclusive of the foregoing stipulation, comprising all of the evidence taken in the case of "United States of America, Complainant, vs. Industrial Association of San Francisco; California Industrial Council; Industrial Association of Santa Clara County, unincorporated voluntary associations; Builders' Exchange of San Francisco; Builders' Exchange of San Jose; Master Plumbers' Association; George H. Tay Co.; William Simmonds & Co.; Pacific Portland Cement Co.; Henry Cowell Lime and Cement Co.; Santa Cruz Portland Cement Co.; Tacoma and Roche Harbor Lime and Cement Co.; United States Gypsum Co.; J. S. Guerin and Co.; Holmes Lime and Cement Co.; Nephi Plaster and Manufacturing Co.; Gladding McBean and Co.; McNear Brick Company; Western Lime and Cement Co.; Otis Elevator Co.; P. E. O'Hair Co.; W. P. Fuller and Co.; Bass Heuter Paint Co.; Wolverine Brass Works; Dalziel Moller Co.; Crane Company, Inc.; Grinnell Co. Inc.; Grinnell Co. of the Pacific, Inc.; Bethlehem Shipbuilding Co., corporations; William H. George; Emil Hogberg; Joseph B. Keenan; J. D. McGilvray; R. J. H. Forbes; Alex. Mennie; T. G. Berg; James H. Pinkerton; Charles Gompertz; D. J. Sullivan; George T. Bowen; George R. Perkins; Marion D. Cohn; J. J. Neal; D. B. Farquharson; C. S. Allred; John Viller; Lawrence E. Crawford; William P. Goss; John Doe Furman; Atholl McBean, Defendants, Numbered 1044 In Equity, in the Southern Division of the United States District Court for the Northern District of California, Third Division, said evidence being stated in simple and condensed form, all parts not essential to the decision of the question presented by the appeal being omitted and the oral testimony of witnesses being stated in narrative form. And we agree that all parties hereto have received due and legal notice of said statement of evidence as required by Equity Rule 75, and we accept [fol. 664] service of such notice and hereby waive further notice of filing said statement, and we agree that said statement as made may be approved by the Trial Judge or by any Judge sitting in the above-entitled Court without further notice to any parties hereto, and that when so approved may be filed in the Clerk's Office and become a

part of the record for the purpose of appeal in said cause taken by said defendants above named.

Dated February 15, 1924.

Henry A. Guiler, Special Assistant to the Attorney General; John T. Williams, United States Attorney for the Northern District of California; Grove J. Fink, Special Assistant to the United States Attorney for the Northern District of California; James Raleigh Kelly, Special Assistant to the Attorney General; H. H. Atkinson, Special Assistant to the United States Attorney for the Northern District of California; Augustus T. Seymour, Assistant to the Attorney General, Attorneys for Complainant. Max J. Kuhl, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co. Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex. Mennie, T. G. Berg, James H. Pinkerton, Charles-W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean. Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. Samuel G. Tompkins, Attorney for Industrial Association, Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose.

[fol. 665]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING STATEMENT OF EVIDENCE ON APPEAL—Filed
Feb. 27, 1924

The foregoing statement of evidence is a true, complete and properly prepared statement of the substance of all the testimony and evidence introduced and admitted upon the trial of the above-entitled cause in the Southern Division of the United States District Court for the Northern District of California, Third Division, all parts not essential to the decision of the questions presented by appeal [fol. 666] being omitted, and the same is hereby settled, allowed and

approved as the statement of evidence in the appeal in the above-entitled cause.

February 27th, 1924.

(Sgd.) M. T. Dooling, United States District Judge.

[File endorsement omitted.]

[fol. 667]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Feb. 7, 1924.

The above-named defendants, and each of them, conceiving themselves aggrieved by the decree made and entered on the 19th day of December, 1923, in the above-entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States, [fol. 668] for the reasons specified in the Assignment of Errors, which is filed herewith, and pray that this appeal may be allowed, and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, be transferred to the Supreme Court of the United States under the rules of said Court in such cases made and provided, and that citation be issued as provided by law.

Dated February 6, 1924.

Max J. Kuhl, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. E. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gomperts, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean. Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. S. T. Tompkins, Attorney for Industrial Association of Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose.

[fol. 669] [File endorsement omitted.]

[fol. 670] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Feb. 7, 1924

Comes now the defendants above named, and present this Assignment of Errors, and say that in the record and proceedings in the above-entitled cause and the final decree made and entered against them therein on the 19th day of December, 1923, there is error in the particulars hereinafter set forth, that is to say:

[fol. 671]

I

The Court erred in making said final decree and granting the injunction therein contained, because it appears from the record in this cause that complainant was not entitled to the injunction granted in said decree, and that its application for the same should have been refused.

II

The Court erred in making said final decree and in granting the injunction therein because it appears from the record in this cause that said defendants at no time violated the Act of July 2, 1890, known as "an Act to protect trade and commerce against unlawful monopolies," or acts amendatory thereof and supplemental thereto, and that said defendants did not violate any other federal law or statute, or do any acts or enter into any agreements or conspiracy which would give the above-entitled Court the right or jurisdiction to grant an injunction against them or make said final decree.

III

The Court erred in making said final decree and granting the injunction therein contained because none of the allegations in the Bill of Complaint on file in the above-entitled cause stating that said defendants engaged in and are engaged in and threatened to engage in a conspiracy to restrain trade and commerce in building materials among the several states of the United States and foreign nations in violation of the Act of July 2, 1890, referred to in Assignment II herein, or acts amendatory thereof and supplemental thereto, were sustained by the evidence offered or the record in said cause.

IV

The Court erred in refusing to sustain the objection of defendants [fol. 672] that the facts set forth in the Bill of Complaint in said cause are insufficient in fact to constitute a valid cause of action.

V

The Court erred in finding and decreeing that the defendants have been guilty of a conspiracy in restraint of interstate commerce.

VI

The Court erred in finding and decreeing that the defendants have been guilty of a conspiracy in restraint of foreign commerce.

VII

The Court erred in finding and decreeing that the defendants have been guilty of a conspiracy in restraint of interstate and foreign commerce in such a manner and to such an extent as is set forth in the opinion of said Court, filed with the Clerk of the above-entitled Court on November 9, 1923, to which opinion reference is made in the final decree of said Court.

VIII

The Court erred in finding that these defendants by agreement or concerted action, or otherwise, did interfere with interstate or foreign commerce.

IX

The Court erred in finding that the defendants are acting in concert for the purpose of putting into effect and maintaining what is designated as the "American Plan" in the building industry in San Francisco and some of its neighboring counties.

X

The Court erred in finding that the "American Plan" contemplates the employment of union and non-union men in equal proportions, with a non-union foreman on the job.

[fol. 673]

XI

The Court erred in finding that the so-called permit system, mentioned in the Bill of Complaint on file in this action and referred to in the affidavits and testimony of various witnesses, was the principal means, or any means, by which a concerted action of these defendants was rendered effective in interfering with or conspiring to interfere with interstate or foreign commerce.

XII

The Court erred in finding that under the permit system no one could purchase building materials covered thereby without obtaining a permit from the Permit Bureau of the Builders' Exchange.

XIII

The Court erred in not dismissing the Bill of Complaint on file in said cause for the reasons set forth in defendants' answers.

XIV

The Court erred in not ordering and decreeing that defendants have and recover the costs which they incurred in the above-entitled matter.

XV

The Court erred in finding that efforts were made by these defendants to prevent manufacturers and dealers without the State of California from shipping to anyone who had not a permit or who could not procure one.

XVI

The Court erred in finding that the machinery for bringing into effect the American Plan was placed in the hands of the Industrial Relations Committee of the Builders' Exchange.

XVII

The Court erred in finding that any materials put under the [fol. 674] permit system by these defendants were produced without the State of California.

XVIII

The Court erred in finding that the defendants placed under the permit system articles not manufactured or produced within the State of California, but which came into the State of California in interstate commerce from without the State.

XIX

The Court erred in enjoining these defendants from directly and indirectly, individually and collectively requiring any permit for the purchase, sale or use of the building materials or supplies produced without the State of California and coming into the State of California in interstate or foreign commerce.

XX

The Court erred in enjoining these defendants from directly and indirectly, individually and collectively making as a condition for the issuance of any permit for the purchase, sale or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without the State of California.

XXI

The Court erred in enjoining these defendants from directly and indirectly, individually and collectively attempting to prevent or discourage any person without the State of California from shipping building materials or other supplies to any person whatsoever within the State of California.

XXII

The Court erred in enjoining these defendants from directly and indirectly, individually and collectively aiding, abetting or assisting others to do any or all of the matters or things set forth in the final decree of said Court hereinbefore referred to.

[fol. 675]

XXIII

The Court erred in ordering and decreeing that complainant have and recover of defendant the costs which it incurred in the above-entitled matter.

XXIV

The Court erred in receiving in evidence the affidavit of Grant R. Bennett and in overruling the objection that the testimony of said Grant R. Bennett, contained in said affidavit, was incompetent, irrelevant and immaterial, and that the matter contained therein was multifarious in that it tended to prove a different conspiracy from the one charged in the Bill of Complaint.

XXV

The Court erred in denying the motion to strike out the testimony of Grant R. Bennett upon each and all of the grounds set forth in Assignment XXIV to the admission in evidence of said affidavit of Grant R. Bennett.

XXVI

The Court erred in receiving in evidence the affidavit of J. F. Cambiano and in overruling the objection that the testimony of J. F. Cambiano, contained in said affidavit, was incompetent, irrelevant and immaterial, and that the matter contained therein was multifarious in that it tended to prove a different conspiracy from the one charged in the Bill of Complaint.

XXVII

The Court erred in denying the motion to strike out the testimony of J. F. Cambiano upon each and all of the grounds set forth in Assignment XXVI to the admission in evidence of said affidavit of J. F. Cambiano.

XXVIII

The Court erred in finding and decreeing that the defendants have been guilty of a conspiracy in restraint of interstate and foreign commerce, because it appears from the record in this cause and the evidence adduced in the trial thereof, that complainant endeavored to prove several separate conspiracies to interfere with interstate or foreign commerce between different groups of the above-named defendants, and that no evidence was offered to show one conspiracy or a general conspiracy between all of the above-named defendants.

Wherefore, the defendants above named pray that the final decree entered herein the 19th day of December, 1923, be reversed in the particulars wherein error is assigned.

Dated Feb. 6, 1924.

Max J. Kuhl, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean. Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. Samuel G. Tompkins, Attorney for Industrial Association of Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose.

[fol. 677] [File endorsement omitted.]

[fol. 678]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed Feb. 11, 1924

The above-named defendants, Industrial Association of San Francisco; California Industrial Council; Industrial Association of Santa Clara County, unincorporated voluntary associations; Builders' Exchange of San Francisco; Builders' Exchange of San Jose; Master [fol. 679] Plumber's Association; George H. Tay Co.; William Simmonds & Co.; Pacific Portland Cement Co.; Henry Cowell Lime and Cement Co.; Santa Cruz Portland Cement Co.; Tacoma and Roche Harbor Lime and Cement Co.; United States Gypsum Co.; J. S. Guerin and Co.; Holmes Lime and Cement Co.; Nephi Plaster and Manufacturing Co.; Gladding McBean and Co.; McNear Brick Company; Western Lime and Cement Co.; Otis Elevator Co.; P. E. O'Hair Co.; W. P. Fuller and Co.; Bass Heuter Paint Co.; Wolverine Brass Works; Dalziel Moller Co.; Crane Company, Inc.; Grinnell Co., Inc.; Grinnell Co. of The Pacific, Inc.; Bethlehem Shipbuilding Co., corporations; William H. George; Emil Hogberg; Joseph B. Keenan; J. D. McGilvray; R. J. H. Forbes; Alex Mennie; T. G. Berg; James H. Pinkerton; Charles W. Gompertz; D. J. Sullivan; George T. Bowen; George R. Perkins; Marion D. Cohn; J. J. Neal; D. B. Farquharson; C. S. Allred; John Viller; Lawrence E. Crawford; William P. Goss; John Doe Furman; **Atholl McBean**, and each of them, having prayed for the allowance of an appeal in the above-entitled cause to the Supreme Court of the United States from the decree made and entered in the above-entitled matter by the above-named Honorable Court on the 19th day of December, 1923, and from each and every part thereof, and having presented and filed their Assignment of Errors pursuant to the statutes and rules of Court in such cases made and provided;

On consideration thereof, it is ordered that the petition for appeal of said defendants, and each of them, be and the same is hereby allowed as prayed.

It is further ordered that citation be issued as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be transmitted to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

It is further ordered that security for costs on appeal be fixed in [fol. 680] the sum of Fifteen hundred (\$1,500) Dollars.

Dated February 11th, 1924.

M. T. Dooling, United States District Judge.

[File endorsement omitted.]

[fols. 681 & 682] BOND ON APPEAL FOR \$1,500—Approved and filed Feb. 15, 1924; omitted in printing

[fol. 683] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

STIPULATION AS TO PREPARATION OF TRANSCRIPT OF RECORD—Filed
March 21, 1924

It is hereby stipulated by and between the complainant above-named and the defendants above-named that the pleadings, papers, documents and records designated in the defendants' præcipe for transcript of record are hereby adopted and designated by all of the parties to this cause as all of the pleadings, papers, documents, proceedings and records necessary and sufficient for a complete record in this cause on appeal, and the Clerk of the above-entitled Court is hereby instructed to prepare the record on appeal, in accordance with said præcipe for transcript of record.

Henry Anderson Guiler, Special Assistant to the Attorney General; John T. Williams, United States Attorney for the Northern District of California; Grove J. Fink, Special Assistant to the United States Attorney for the Northern District of California; James Raleigh Kelly, Special Assistant to the Attorney General; Harry H. Atkinson, Special Assistant to the United States Attorney General; A. T. Seymour, Assistant to the Attorney General, Attorneys for Complainant. C. F. Eldridge, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Gurein and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hoberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William [fol. 684] P. Goss, John Doe Furman, Atholl McBean. Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. Samuel G. Tompkins, Attorney for Industrial Association Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose.

Dated March 18, 1924.

It is so ordered: Bourquin, Judge.

[File endorsement omitted.]

[fol. 685]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DESIGNATION AND APPEARANCE OF ATTORNEY—Filed Apr. 3, 1924

Chauncey F. Eldridge, the duly and regularly appointed and designated attorney of record in the above-entitled matter, for defendants and appellants Industrial Association of San Francisco; Builders' Exchange of San Francisco; Master Plumbers' Association; George H. Tay Co.; Pacific Portland Cement Co.; Henry Cowell [fol. 686] Lime and Cement Co.; Santa Cruz Portland Cement Co.; Tacoma and Roche Harbor Lime and Cement Co.; United States Gypsum Co.; J. S. Guerin and Co.; Holmes Lime and Cement Co.; Nephi Plaster and Manufacturing Co.; Gladding McBean and Co.; McNear Brick Company; Western Lime and Cement Co.; Otis Elevator Co.; P. E. O'Hair Co.; W. P. Fuller & Co.; Bass Heuter Paint Co.; Wolverine Brass Works; Dalziel Moller Co.; Crane Company, Inc.; Grinnell Co. Inc.; Grinnell Co. of the Pacific, Inc.; Bethlehem Shipbuilding Co.; William H. George; Emil Hogberg; Joseph B. Keenan; J. D. McGilvray; R. J. H. Forbes; Alex Mennie; T. G. Berg; James H. Pinkerton; Charles W. Gompertz; D. J. Sullivan; George T. Bowen; George R. Perkins; Marion D. Cohn; J. J. Neal; D. B. Farquharson; C. S. Allred; John Viller; Lawrence B. Crawford; William P. Goss; John Doe Furman and Atholl McBean, and Samuel G. Tompkins, the duly and regularly appointed and designated attorney of record in the above-entitled matter, for defendants and appellants Industrial Association of Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose, and Arthur L. Erb, the duly and regularly appointed and designated attorney of record in the above-entitled matter, for defendants and appellants Thomas W. Simmons & Company, sued herein as William Simmonds & Co., desiring Herman H. Phleger to appear as attorney of record for all of the said defendants and appellants, hereby appoint Herman H. Phleger as attorney of record for the said defendants and appellants, to appear and act, together with Chauncey F. Eldridge, Samuel G. Tompkins and Arthur L. Erb, as attorney of record for defendants and appellants Industrial Association of San Francisco; Builders' Exchange of San Francisco; Master Plumbers' Association; George H. Tay Co.; Pacific Portland Cement Co.; Henry Cowell Lime and Cement Co.; Santa Cruz Portland Cement Co.; Tacoma and Roche Harbor Lime and Cement Co.; [fol. 687] United States Gypsum Co.; J. S. Guerin and Co.; Holmes Lime and Cement Co.; Nephi Plaster and Manufacturing Co.; Gladding McBean and Co.; McNear Brick Company; Western Lime and Cement Co.; Otis Elevator Co.; P. E. O'Hair Co.; W. P. Puller & Co.; Bass Heuter Paint Co.; Wolverine Brass Works; Dalziel Moller Co.; Crane Company, Inc.; Grinnell Co. Inc.; Grinnell Co. of the Pacific, Inc.; Bethlehem Shipbuilding Co.; William H. George; Emil Hogberg; Joseph B. Keenan; J. D. McGilvray; R. J. H. Forbes; Alex Mennie; T. G. Berg; James H. Pinkerton; Charles W. Gom-

pertz; D. J. Sullivan; George T. Bowen; George R. Perkins; Marion D. Cohn; J. J. Neal; D. B. Farquharson; C. S. Allred; John Viller; Lawrence E. Crawford; William P. Goss; John Doe Furman; and Atholl McBean; Industrial Association of Santa Clara County, also sued herein as California Industrial Council; and Builders' Exchange of San Jose; Thomas W. Simmons & Company, sued herein as William Simmons & Co.;

Now comes Herman H. Phleger and appears as attorney of record for defendants and appellants Industrial Association of San Francisco; Builders' Exchange of San Francisco; Master Plumbers' Association; George H. Tay Co.; Pacific Portland Cement Co.; Henry Cowell Lime and Cement Co.; Santa Cruz Portland Cement Co.; Tacoma and Roche Harbor Lime and Cement Co.; United States Gypsum Co.; J. S. Guerin and Co.; Holmes Lime and Cement Co.; Nephi Plaster and Manufacturing Co.; Gladding McBean and Co.; McNear Brick Company; Western Lime and Cement Co.; Otis Elevator Co.; P. E. O'Hair Co.; W. P. Fuller & Co.; Bass Heuter Paint Co.; Wolverine Brass Works; Dalziel Moller Co.; Crane Company, Inc.; Grinnell Co. Inc.; Grinnell Co. of the Pacific, Inc.; Bethlehem Shipbuilding Co.; William H. George; Emil Hogberg; Joseph B. Keenan; J. D. McGilvray; R. J. H. Forbes; Alex Mennie; T. G. Berg; James H. Pinkerton; Charles W. Gompertz; D. J. Sullivan; [fol. 688] George T. Bowen; George R. Perkins; Marion D. Cohn; J. J. Neal; D. B. Farquharson; C. S. Allred; John Viller; Lawrence E. Crawford; William P. Goss; John Doe Furman; Atholl McBean; Industrial Association of Santa Clara County, also sued herein as California Industrial Council; Builders' Exchange of San Jose, and Thomas W. Simmons & Company, sued herein as William Simmons & Co.

Dated this 2nd day of April, 1924.

Chauncey F. Eldridge, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Heal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, and Atholl McBean. Samuel G. Tompkins, Attorney for

Industrial Association of Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange [fol. 689] change of San Jose. Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. Herman H. Phleger, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean and Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Bass Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc., Grinnell Co., Inc., Grinnell Co. of the Pacific, Inc., Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, Atholl McBean, Industrial Association of Santa Clara County, also sued herein as California Industrial Council; Builders' Exchange of San Jose, and Thomas W. Simmons & Company, sued herein as William Simmonds & Co.

[File endorsement omitted.]

[fol. 690] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 21, 1924

To the Clerk of the above-entitled Court:

You will please prepare transcript of record in this cause to be filed in the office of the clerk of the Supreme Court of the United States for use on appeal to the Supreme Court of the United States, and you will please incorporate in such transcript the following portions of the record in this cause:

1. The Bill of Complaint.
2. The joint and several answers of defendants, Industrial Association of San Francisco; Builders' Exchange of San Francisco; Master Plumbers' Association; George H. Tay & Co.; Henry Cowell Lime

and Cement Co.; Gladding, McBean and Co.; William H. George; Emil Hogberg; Joseph B. Keenan; J. D. McGilvray; R. J. H. Forbes; Alex Mennie; T. G. Berg; James H. Pinkerton; Charles W. Gompertz; D. J. Sullivan; George T. Bowen; George R. Perkins; Marion D. Conn; J. J. Neal; D. B. Farquharson; C. S. Allred; John Viller; Lawrence E. Crawford; William P. Goss; John Doe Furman; Atholl McBean; W. P. Fuller & Co., Crane Co.

3. Answer of Builders' Exchange of San Jose.

4. Answer of the Industrial Association of Santa Clara County, (sued herein as California Industrial Council, Industrial Association of Santa Clara County).

5. Appearance of defendants, Dalziel Moller Co., McNeal Brick Company, J. S. Guerin & Co., Otis Elevator Co., Tacoma & Roche Harbor Lime Co., Bass Heuter Paint Company, Bethlehem Shipbuilding Corporation, Ltd., Western Lime & Cement Co., Holmes Lime & Cement Co., and Stipulation and Order as to Answer.

6. Appearance of defendants, Pacific Portland Cement Co., Santa Cruz Portland Cement Co., and P. E. O'Hair Co., and Stipulation to Answer.

[fol. 691] 7. Appearance of United States Gypsum Co., and Stipulation as to Answer.

8. Appearance of Thomas W. Simmons & Co., (sued herein as William Simmonds & Co.) and Stipulation and Order as to Answer.

9. Appearance of defendants, Nephi Plaster & Manufacturing Co., Wolverine Brass Works, Grinnell Co. Inc., and Grinnell Co. of the Pacific, Inc., and Stipulation and Order as to Answer, and setting aside defaults, and substituting the final decree rendered in the above-entitled action as the decree against said defendants.

10. Order denying application for injunction pendente lite.

11. Statement of evidence on appeal.

12. Stipulation to statement of evidence on appeal.

13. Order approving statement of evidence on appeal.

14. Opinion.

15. Order overruling objections to complaint.

16. Final decree.

17. Notice of petition for appeal.

18. Petition for appeal.

19. Assignment of Errors.

20. Order allowing appeal.

21. Citation.

22. Undertaking on appeal.
23. Appearance of C. F. Eldridge as attorney for certain defendants in place and stead of Max J. Kuhl, deceased.
24. Order designating C. F. Eldridge as attorney for certain defendants in place and stead of Max J. Kuhl, deceased.
25. Præcipe for transcript of record.
26. Stipulation as to transcript of record.
27. Clerk's certificate to transcript of record.

Said transcript to be prepared as required by law and the rules of the Supreme Court of the United States.

[fol. 692] The original citation with plaintiff's acceptance of service thereof should accompany the transcript.

C. F. Eldridge, Attorney for Industrial Association of San Francisco, Builders' Exchange of San Francisco, Master Plumbers' Association, George H. Tay Co., Pacific Portland Cement Co., Henry Cowell Lime and Cement Co., Santa Cruz Portland Cement Co., Tacoma and Roche Harbor Lime and Cement Co., United States Gypsum Co., J. S. Guerin and Co., Holmes Lime and Cement Co., Nephi Plaster and Manufacturing Co., Gladding, McBean & Co., McNear Brick Company, Western Lime and Cement Co., Otis Elevator Co., P. E. O'Hair Co., W. P. Fuller & Co., Heuter Paint Co., Wolverine Brass Works, Dalziel Moller Co., Crane Company, Inc.; Grinnell Co. Inc.; Grinnell Co. of the Pacific, Inc.; Bethlehem Shipbuilding Co., William H. George, Emil Hogberg, Joseph B. Keenan, J. D. McGilvray, R. J. H. Forbes, Alex Mennie, T. G. Berg, James H. Pinkerton, Charles W. Gompertz, D. J. Sullivan, George T. Bowen, George R. Perkins, Marion D. Cohn, J. J. Neal, D. B. Farquharson, C. S. Allred, John Viller, Lawrence E. Crawford, William P. Goss, John Doe Furman, and Atholl McBean. Arthur L. Erb, Attorney for Thomas W. Simmons & Company, sued herein as William Simmonds & Co. Samuel G. Tompkins, Attorney for Industrial Association, Santa Clara County, also sued herein as California Industrial Council, and Builders' Exchange of San Jose.

Dated March 18, 1924.

Received a copy of the within Præcipe for transcript of record this — day of March, 1924.

Henry Anderson Guiler, Special Assistant to the Attorney General. John T. Williams, United States Attorney for the Northern District of California. Grove J. Fink, Special Assistant to the United States Attorney for the Northern District of California. James Raleigh Kelley, Special Assistant to the Attorney General. Harry H. Atkinson, Special Assistant to the United States Attorney General. A. L. Seymour, Assistant to the Attorney General.

[File endorsement omitted.]

[fol. 693] IN UNITED STATES DISTRICT COURT

(Title of Court and Cause)

CLERK'S CERTIFICATE

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing six hundred ninety-two (692) pages, numbered from 1 to 692, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the præcipe for record on appeal, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the record on appeal to the Supreme Court of the United States.

I further certify that the cost of the foregoing transcript of record is \$356.35; that said amount was paid by the defendants and that the original Citation issued in said cause is hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 9th day of April, A. D. 1924.

Walter B. Maling, Clerk of the United States District Court for the Northern District of California. (Seal of United States District Court, Northern District of California.)

[fols. 694 & 695] CITATION—In usual form, showing service on A. T. Seymour et al.; filed Feb. 11, 1924; omitted in printing

[File endorsement omitted.]

Endorsed on cover: File No. 30,287. N. California D. C. U. S. Term No. 365. Industrial Association of San Francisco, California Industrial Council, Industrial Association of Santa Clara County et al., appellants, vs. The United States of America. Filed April 24th, 1924. File No. 30,287.

MADE IN U.S.A.

In the Supreme Court of the United States

United States

OCTOBER TERM, 1924

No. 365

INDUSTRIAL ASSOCIATION OF SAN FRANCISCO,
CALIFORNIA INDUSTRIAL COUNCIL, INDUSTRIAL
ASSOCIATION OF SANTA CLARA COUNTY, et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLANTS.

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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1924

No. 365

INDUSTRIAL ASSOCIATION OF SAN FRANCISCO,
CALIFORNIA INDUSTRIAL COUNCIL INDUSTRIAL
ASSOCIATION OF SANTA CLARA COUNTY, et al.,

Appellants,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLANTS.

Statement.

This case arises out of an industrial dispute in San Francisco. It is an attempt to terminate an industrial conflict through the use of the Anti-Trust Act.

The United States of America filed its bill of complaint in the District Court for the Northern District of California alleging that the defendants had entered

Note: Transcript references are indicated thus; (p.—).

into a conspiracy to restrain interstate commerce, contrary to the Anti-Trust Act of July 2, 1890 (26 Stat. 209).

After trial the District Court entered its decree in favor of the United States, and the defendants have appealed from the decree directly to this court, under the provisions of Section 2 of the Act of February 11, 1903 (32 Stat. 823).

The theory of the proceeding was that these defendants by refusing to sell building materials to persons who maintained the "closed union shop" on building work in San Francisco, had restrained interstate commerce.

The bill of complaint, after reciting that it is brought at the direction of the Attorney General under the provisions of the Anti-Trust Act alleges that for three years the defendants have engaged and are continuing and threatening to continue to engage in a conspiracy to restrain trade and commerce in violation of that act. It sets forth that the means and methods agreed by the defendants to be employed and actually employed in furtherance of the conspiracy were as follows:

1. Refusing to sell building materials to purchasers unless such purchasers would agree (a) to employ a foreman and at least 50% of laborers who were not members of a labor union; and (b) to carry out the "American Plan".
2. Collusively bidding for the furnishing of materials or the construction of buildings.
3. Determining arbitrarily who should engage in the furnishing of building materials.

4. Preventing by threats and otherwise, others from engaging in the furnishing of building materials or constructing buildings.
5. Agreeing that no persons save members of the Builders Exchange or the Industrial Association should engage in the furnishing of materials or construction of buildings.
6. Fixing wages arbitrarily, to enhance their profit or profits.
7. Fixing arbitrarily the persons who should be employed in the construction of buildings.
8. Distributing secret lists containing the names of persons who refused to join the Builders Exchange or the Industrial Association.
9. Coercing others from resorting to redress through the courts.
10. Agreeing with banks to coerce the competitors of defendants to become members of the Builders Exchange and the Industrial Association.
11. Discriminating against laborers who were members of trade unions.
12. Agreeing to form and forming the Builders Exchange and the Industrial Association.
13. Agreeing to be bound by and carrying out the rules of the Builders Exchange and the Industrial Association (p 3).

None of these alleged illegal acts are specifically stated to have been directed against interstate commerce though there is a very vague and general statement to the effect that the defendants were engaged in a conspiracy to restrain such commerce. Moreover,

none of the acts alleged were proved, save and except that it was shown, and indeed admitted by defendants that certain of them had refused to sell building materials to persons who enforced the closed shop.

The prayer of the bill was that the defendants be restrained from carrying out or continuing the conspiracy; that certain of the defendant associations and corporations be dissolved, and that the defendants be restrained from doing any of the specific acts alleged in the complaint.

The defendants consisted of the Builders Exchange, a corporation organized in 1890, and composed of many persons and firms engaged in the building industry in San Francisco, both in the construction of buildings and the supplying of building materials; the Industrial Association of San Francisco, a voluntary association composed of several thousand business and professional men and firms in San Francisco; the Master Plumbers Association, a corporation, and various firms and individuals, some of them members of these organizations and some not, but all connected in some way with these organizations, or with the building industry in San Francisco.

The defendants' answers specifically denied the allegations of the bill, and contained an affirmative statement as to the industrial and labor situation in San Francisco, and of the steps these defendants had taken in an attempt to reach a satisfactory solution of the difficulties in connection with it. They showed further that the defendants had acted to protect their own interests and the interests of the public in an industrial controversy,

that there was no intent whatever to restrain or interfere with interstate commerce, and that any possible effect upon interstate commerce was incidental and remote (p. 7).

An application for an injunction pendente lite was denied, the court saying that

“if there has been in fact any appreciable interference with interstate commerce resulting from unity of action or purpose on the part of defendants or any number of them, such interference was not sought, desired or intended and that there is at present no threatened or prospective injury to such commerce grave enough to warrant the court to disturb in advance of a trial and upon conflicting affidavits the industrial situation existing in San Francisco and neighboring counties for the past three years” (p. 33).

After the denial of the injunction pendente lite, the case was heard on the merits. Further evidence was then introduced by both parties. The evidence consisted of affidavits, exhibits, and a written transcript of proceedings had in a state court in California against the defendants.

The Judge of the District Court thereafter rendered a written opinion (p. 34). The opinion recognizes that an industrial conflict was in progress in San Francisco between workers and employers and disclaims any intention to interfere with this conflict, or with the ends to be attained. But it finds that certain means employed violated the Anti-Trust Act, and though there was no intent to interfere with interstate commerce, that these practices did, to a certain extent, interfere with the free movement of articles of interstate com-

merce. The court did not believe that the practices interfered with interstate commerce to such an extent as to warrant the dissolution of any of the defendants, but thought there were sufficient interferences to warrant certain injunctive relief.

Pursuant to the court's opinion a final decree was entered. This decree enjoins the defendants from (p. 38):

- (a) Requiring any permit for the purchase, sale or use of building materials or supplies produced without the State of California and coming into the State of California in interstate or foreign commerce.
- (b) Making as a condition for the issuance of any permit for the purchase, sale or use of building materials or supplies, any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without the State of California.
- (c) Attempting to prevent or discourage any person without the State of California from shipping building materials or other supplies to any person whatsoever within said State of California.
- (d) Aiding, abetting, or assisting, directly or indirectly, individually or collectively, others to do any or all of the matters or things herein set forth.

Specification of Errors.

Defendants specify as error the following (p. 478):

1. The evidence does not show any contract, combination or conspiracy in restraint of trade or commerce among the several states or with foreign nations, or that the defendants, or any of them, engaged in any such combination or conspiracy, or violated in any way the provisions of the Anti-Trust Act. The court therefore committed error in entering its decree in favor of the plaintiff and against the defendants (Assignment of Errors 1, 2, 3, 4, 5, 6, 7, 8, 28, pp. 478 et seq.).

2. The decree is vague, indefinite and uncertain and does not set forth the acts or transactions which are forbidden. The court therefore committed error in entering such decree (Assignment of Errors 19, 20, 21, 22, pp. 478 et seq.).

3. As to certain of the defendants the evidence wholly fails to show any participation in any of the acts or things complained of, or any connection therewith. The court therefore committed error in entering its decree against such defendants (Assignment of Errors 1, 2, 3, 5, 6, 7, 8, 9, 28, pp. 478 et seq.).

Statement of Facts.

(a) Domination of Building Industry in San Francisco By Unions.

San Francisco has long been known as a "Union Town". The building industry there was particularly the subject of union labor domination. Prior to Febru-

ary 1, 1921, that industry was conducted on a strictly closed shop basis; that is, the union workers refused to work for any employer who employed any worker who was not a member of a San Francisco labor union or on any building where a non-union worker was employed. No matter how experienced or qualified a worker might be, or how much the employer might desire or require his services, he could not be employed unless he was a member of a San Francisco union. It is fair to say that less than one per cent of the building workers were without union cards (p. 434).

There were more than fifty separate unions in the building trades industry, each separate craft being organized into a separate union, including not only skilled crafts, but common labor as well.

Not only did the unions demand that the building industry be conducted on a closed shop basis, but they enforced many arduous and uneconomic restrictions upon the building industry, as a result of which costs were increased, production decreased, and progress generally retarded. These restrictions were of the following character:

- a. Rules limiting the number of apprentices.
- b. Rules limiting the amount of work.
- c. Rules limiting the use of labor saving devices.
- d. Rules usurping the authority and power of the employer.

The following are typical instances of these restrictions. The plumbers' union enforced the following:

- a. No apprentices were allowed in the plumbing trade except journeymen plumbers' sons, from

1905 to March, 1920, and even master plumbers' sons were not allowed to learn the trade from 1907 to 1921. As a result not more than 15 to 25 apprentices learned the trade in San Francisco during this 14-year period (p. 410).

- b. No plumber was allowed to bend a pipe to fit it into an offset, but was required to use fittings instead, to cause more work (p. 410).
- c. No laborers or carpenters were permitted to cut a hole in concrete to permit the passage of a pipe, no matter how competent the workman nor how small or how simple the work might be (p. 409).
- d. No union plumber would work on non-union material (p. 410).
- e. Union men could not work overtime on Saturday without permission of the union, no matter how serious the emergency (p. 411).
- f. Detailed reports had to be made daily by union men to union headquarters, showing how many fixtures were set each day. Men who did more work than the standard set by the union were disciplined for their efficiency (p. 411).
- g. No employer was allowed to stay on a job for more than two hours a day (p. 410).
- h. The union could order as many men on a job as it saw fit, regardless of the wishes of the employer (p. 409).
- i. Work could not be commenced on a job until the business agent of the union told how the job was to be done (p. 409).

The Painters' Union enforced the following:

- a. No brush more than four inches in width could be used on or in any building (p. 439).
- b. Roof painting with a sweep brush (a wide brush with a long handle) was prohibited and the work had to be done with a small brush (p. 439).
- c. No union painter would paint non-union lumber (p. 440).
- d. No union painter would use the labor saving device known as the paint gun or paint spray (p. 440).

The Plasterers' Union enforced the following:

- a. Only one apprentice was permitted in each shop, regardless of the number of men employed in the shop or the size of the shop, and no additional apprentice was admitted until the first apprentice had served two years (p. 464).
- b. Double time was demanded for Saturday work, including that done on Saturday morning (p. 464).
- c. The use of labor saving devices such as the cement gun and of certain devices which would lower costs by permitting the use of cheaper material, were prohibited (p. 464).

These restrictions were typical of those imposed by the fifty odd unions in the building industry. But the greatest restriction was the closed shop restriction. It denied to the employer the right to employ a qualified worker, simply because he was not a member of a San Francisco labor union. It also denied to the qualified worker the opportunity of employment if he was not a

San Francisco union man. A union man from another locality could not obtain employment. He must be a member of a San Francisco union. Membership in a distant union was not sufficient. Nor could the new-comer overcome this by joining a union, for by reason of the cost and the conditions imposed, admission to the union was practically unattainable to the new-comer (pp. 435, 457).

It seems almost inconceivable that such conditions could exist or that the unions should be able to enforce or perpetuate them. But such was the case. The use of the strike and the boycott and economic pressure by the unions enforced their regulations. The slightest violation of these regulations by a contractor resulted in a strike, not only by the craft involved, but by every other craft employed by the contractor, not only in San Francisco, but in every other city in which he might have work (pp. 435, 438). The fifty building unions were confederated into a central organization, called the Building Trades Council, and acted in combination and concert in support of the demands of each of the industrial unions. As a consequence the building industry was under the control of the unions and as a result of their pressure the employers were compelled to sign agreements not to employ workers who did not belong to a local union—in other words, to maintain literally the “closed shop” (p. 435).

All this had its effect in increasing the cost of building and in discouraging building construction in San Francisco.

(b) Arbitration and Repudiation By Unions.

These were the conditions which existed in San Francisco early in 1921, at the time the history of this case begins.

On January 18, 1921, the Building Trades Council representing the unions, and the Builders Exchange, one of the defendants, representing the employers, entered into a written agreement of arbitration. This agreement was brought about through the activity of the Chamber of Commerce following several small strikes in the summer and fall of 1920. The arbitration agreement provided that the Board of Arbitration should sit as a continuing board to determine all disputes as to hours, wages and working conditions in the building trades (pp. 414-428).

The arbitrators were Archbishop E. J. Hanna, Roman Catholic Archbishop for San Francisco, M. C. Sloss, formerly an Associate Justice of the Supreme Court of California, and George L. Bell, an industrial expert.

The Board of Arbitrators commenced to function at once. There was first submitted to it for determination the question of the wage to be paid in various of the building crafts. After hearing and argument by the interested parties the board on March 31, 1921, made an award fixing a temporary wage scale for the succeeding six months. This wage scale was a slight reduction from the wages then being paid based upon the fact that wages had increased much more rapidly than the cost of living (p. 423).

On the day following the award the Building Trades Council challenged the jurisdiction of the board to

award a reduction in wages (p. 426). After discussion between the various parties, the board again on April 29, 1921, unanimously reaffirmed its decision (p. 427).

Thereupon, the Building Trades Council served notice on the Board of Arbitrators that it would not be bound by the decision decreasing wages, and declined to proceed further in the arbitration cases (p. 428).

As a result, the Board of Arbitration ceased to function (p. 428).

The members of the crafts affected by the ruling immediately struck and refused to work, thereby bringing building operations to a standstill (p. 436).

Some weeks were then spent in an endeavor to persuade the members of the striking unions to return to work, but without success (pp. 265, 436).

Thereupon large mass meetings of citizens were held under the auspices of the Chamber of Commerce. It was there resolved that building in San Francisco could not stop—that it must be continued and if necessary to effect that end, workers from other cities must be brought in (p. 436). Funds were subscribed and placed in the hands of a committee of the Chamber of Commerce. This committee proceeded to bring in workmen and bound itself to protect them against violence. These workers were assured of employment at the wage fixed by the Board of Arbitration, and were further assured that so long as they remained competent mechanics they would be protected in their right to earn a living during such time as they desired to reside in San Francisco. An appeal made to the entire com-

munity by the Chamber of Commerce was met by a general response, both of money and other assistance (p. 436).

(c) Establishment of "American Plan" By Builders Exchange.

The Builders Exchange, one of the principal defendants, is a corporation, incorporated in 1890 (p. 220). It has over a thousand members, composed of contractors engaged in the building trade and of dealers in building materials (p. 433). It engages in no business. There is the freest competition between its members. It does not fix prices. The objects of the Exchange as set forth in its By-laws, and as carried out in practice, were (pp. 222-238):

1. To provide quarters for its members.
2. To provide just and equitable methods of dealing as between its members and architects, engineers, owners and employees.
3. To acquire, preserve and distribute information among its members.
4. To foster the establishment and maintenance of fair and open bidding.
5. To foster the unrestricted development of proficient mechanics and competent and responsible masters in the respective trades.

The Builders Exchange and its members were aligned on one side of the labor controversy. They represented the employers of labor. On the other side were the Building Trades Council, and the unions, representing labor.

The conflict commenced. It was a battle for "closed shop" on the part of the unions, for "open shop" on the part of the employers. The employees had ammunition—their right to refuse to work. The employer on the other hand had ammunition. In this case the ammunition was building materials.

Labor refused to work for any employer who employed a worker who did not hold a union card—that is, for any employer who did not maintain a closed shop. The Builders Exchange and its members, on their part, refused to supply certain materials to employers who refused to employ a single non-union workman but who maintained the closed shop excluding all non-union men; they demanded as a condition to supplying the materials that the employer maintain the "American Plan".

The "American Plan" is a term invented in this industrial conflict to signify the fact that a competent workman would not be denied the right to work because of his membership or lack of membership in a labor, or any other organization. It signified that there was perfect freedom in the choice of workman and of employer. No restriction was made as to the number of union men that might be employed on any job, so long as employment was not refused to competent men who were not members of a labor union, simply because of this fact. As a practical demonstration of the fact that there was no discrimination, it was required that at least one non-union man be employed in each craft working on any particular job. All the remaining workers might be union men. The American Plan has

no requirement as to the proportion of union or non-union men that may be employed or that the foreman must be non-union (pp. 110, 136, 153, 395, 445, 453). No such requirements were ever adopted by the governing bodies of the Builders Exchange and no such regulations were ever made effective (pp. 395, 445).

(d) The Permit System.

On June 14, 1921, the Builders Exchange declared in favor of the American Plan, and proceeded to put into effect the so-called Permit System (p. 103). This was nothing more than a plan whereby the members of the Exchange were kept advised as to who was operating on the American Plan and who was not, in order that the members aligned in favor of the American Plan might be informed so that they would not sell certain materials to those who were aligned on the other side of the industrial conflict, that is, those who were operating on the closed shop principle. This plan gradually evolved into this procedure—contractors engaged in building were required to show that they were not operating on the closed shop basis before the members of the Builders Exchange would sell certain specified building materials to them. The mechanism finally evolved was for the person desiring to make the purchase to obtain a permit from the Builders Exchange for specific quantities of materials for use on a particular job, this being done to prevent the diversion of the materials to the unions for use on closed shop jobs. This machinery was rendered necessary by the large number of persons involved, and the difficulty of distinguishing friend from foe, save through a central bureau—the agent at the

Builders Exchange who issued the permits (pp. 438, 394-5-8, 452-3-4, 445).

(e) Local Nature of Permit System and Industrial Controversy.

The materials which were subject to the permit system were: cement, lime, plaster, ready mixed mortar, brick, terra cotta and clay products and sand, rock and gravel (pp. 112, 137, 445, 454). These materials with a few inconsiderable exceptions *are all produced in California* (pp. 454, 438). The choice of these materials was made for the specific purpose of preventing any question from arising as to interference with interstate commerce (p. 454).

The Industrial Relations Committee of the Builders Exchange in June, 1922 (more than ten months prior to the filing of the bill), recommended that lath, wall-board and Keene Cement (produced elsewhere) be added to the materials covered by the Permit System but this was never ratified by the Central Council, the Board of Directors or by a vote of three-fourths of the members of the Exchange at a meeting called for that purpose, as required by the by-laws of the Exchange (p. 236, sec. 13; p. 231, sec. 6), and *never went into effect. No permits were ever in fact required for these materials* (pp. 445, 454, 457).

It must constantly be borne in mind that the industrial conflict was confined to San Francisco and its immediate vicinity (pp. 79, 81, 327), that the participants are all located there, that all sales as to which permits were required were confined to San Francisco, and that no

permits were required for materials to be used outside the strike area (pp. 81, 327). As to materials to be used outside the strike area, there were no requirements, union men and closed shop contractors could purchase all the materials they desired. Similarly as to materials coming directly from without the state, there were no restrictions of any kind and no permits were required (pp. 451-4-5, 331, 462-3-7, 466).

(f) The Industrial Association.

The Industrial Association, the other principal defendant, is a voluntary association, composed of several thousand members from every walk in life, lawyers, doctors, professional men, as well as business men. Over forty different lines of professional and business activities are represented in its membership (p. 434).

The Industrial Association was formed on November 8, 1921, and shortly thereafter took over the work which had, up to that time, been performed by the Chamber of Commerce (pp. 238-253). The Association has attempted to represent the public in this industrial conflict. The objects of the Association as set forth in its charter are to promote the happiness and prosperity of the people of San Francisco, and to that end it commits itself to the following basic principles:

1. The right of any person to seek, secure and retain work for which he is fitted, and the right of the employer to engage or dismiss employees, should not be abridged or denied because of membership or lack of membership in any organization or association of any kind.

2. **Efficiency in Industry**—This should be created and maintained to enable our enterprises to cope with those of other places. Superior skill and industry in work should be permitted to earn an adequate reward. The establishment of this principle, however, is not to be used to reduce the earnings of a less able man below a fair return for the work done. No artificial limit or restriction should be placed upon the normal production of any man or upon the use of any appliance, invention or other means to increase output, always having due regard for the health, safety, and well-being of the individual.
3. **The right of management** is inseparable from responsibility for industrial results. Therefore, the right of the employer to engage or dismiss men individually on merit must not be circumscribed; the right on all occasions, however, to be exercised only upon broad principles of justice, and with a recognition of the obligation on the part of management to co-operate with the employee in securing so far as possible continuous employment.
4. No understanding should be reached between employers and employees that ignores the public interest, and no agreement should be tolerated that is illegal or contrary to sound public policy, whether made between employers themselves or with their employees or others.

The Association engaged in no business. It did not fix prices. The freest competition was indulged in between its members (pp. 434, 152).

The Industrial Association was active in the strike, carrying out the engagements previously made by the Chamber of Commerce—to protect workmen against violence, to prevent discrimination against qualified workmen because of membership or non-membership in labor unions, and to keep building in progress (p. 439). Among its activities was that of training apprentices. Through the refusal of the unions to permit apprentices in any substantial numbers, there was a shortage of skilled workmen in San Francisco. The Industrial Association established trade schools where boys and men could learn the plastering, plumbing and other trades. As a result, the supply of labor soon began to increase and more nearly to approach the demand. In two years the Association trained more than 1100 apprentices to become proficient in various useful trades, without expense to the students, the cost of instruction being met by the Industrial Association (p. 439).

(g) Termination of General Strike: Renewed Strikes By Plumbers and Other Trades.

The general strike, commenced after the award of the Arbitration Board in April, 1921, was practically over in September, 1921 (p. 436). At that time all the building trades with the exception of the granite workers, were back at work, although no formal end of the strike had been proclaimed. To all intents and purposes, the in-

dustrial war was over. The permit system was practically discontinued and all was quiet in San Francisco.

But the war was not over for long. It was an armistice, rather than a peace. After quiet for the period from September, 1921, until March, 1922, it broke out afresh, but in a greatly restricted way. In March, 1922, ninety per cent of the plumbers employed in San Francisco were members of the union. Ten per cent did not hold the union card. The Plumbers' Union was considered as the strongest, most powerful and wealthiest union in the building trades. In March, 1922, the Plumbers' Union served upon their employers a demand that all non-union men be discharged and that all plumbing work thereafter be conducted on a closed shop basis. There was no question of wages or working conditions—the demand was merely that all non-union men be discharged (p. 437). This was considered as the entering wedge in an attempt to re-establish the "closed shop" in the building industry in San Francisco.

The demand of the plumbers was soon followed by a similar demand by the plasterers and the bricklayers (p. 437). These demands were not only enforced by a strike, but by a boycott, the boycott being carried to the extent of striking on jobs far removed from San Francisco because the employer employed non-union men in San Francisco (p. 438).

This outbreak was accompanied by many acts of violence in which non-union men were molested, harassed, insulted and beaten, and property on which non-union men were employed was wantonly destroyed or damaged (pp. 437-8). As an accompaniment to strikes in

the past, it had been the practice of the unions to boycott various building materials, such as cement, lime, plaster, mortar, and plumbing materials, and at times such materials were forced off the local market (p. 438).

To meet this situation of strike, demand for the closed shop, violence and threatened boycott, the Builders Exchange representing the employers, again put into effect its permit system covering building materials produced in California, and no such materials were sold to any person who enforced the closed shop in San Francisco, that is, who refused to employ workers merely because they were not members of a union (pp. 438, 107).

(h) Refusals By Plumbing Supply Houses to Sell Materials and Later Abandonment of This Practice.

Shortly after the commencement of the plumbers strike certain houses engaged in the business of selling plumbing materials in San Francisco, in order to protect themselves against boycott and blacklist by the strikers, refused to sell their materials to the unions, their agents or confederates (p. 157). That is, the material men directly involved in the plumbing strike refused to sell to the strikers or those conspiring with them in their attempt to enforce the closed shop (pp. 60, 197). These refusals by the plumbing material houses to sell are entirely separate and independent of the Permit System. They did not take place until more than a year after the Permit System was put into effect, different parties were involved and there was no connection either in plan or operation with the Permit System.

The evidence shows that in some instances some of the plumbing supply houses refused to sell materials to plumbers who were operating on the "closed shop" basis (pp. 60, 169-204). In no case does the evidence show a refusal to make an *interstate* sale. In every case of a refusal to sell, and the refusals shown by the record are few in number, it was shown that the materials sought to be purchased were in the bins or on the shelves of the particular supply house, and that these goods were no longer the subject of interstate commerce. We repeat that in so far as this phase of the case is concerned, that is, that part having to do with the sale of plumbing supplies, there was no connection between it and the so-called permit system. The permit system never covered plumbing supplies.

THE REFUSALS OF PLUMBERS' SUPPLY HOUSES TO SELL THEIR MATERIALS FOR USE ON CLOSED SHOP JOBS IN SAN FRANCISCO CEASED IN NOVEMBER, 1922, SIX MONTHS BEFORE THE BILL OF COMPLAINT WAS FILED (pp. 61, 85, 158, 190). THESE PLUMBERS' REFUSALS ARE THEREFORE OF NO IMPORTANCE IN THIS CASE AND MAY BE DISREGARDED.

Though the plumbers' supply houses had discontinued their refusals to sell to those seeking to re-establish the closed shop after November, 1922, it is not claimed that the Permit System of the Builders Exchange was abandoned. On the contrary, it was in force at all times, including the period when the plumbing supply houses were refusing to sell their goods to the closed shop people. But it was never at any time applied to plumbing supplies. In other words the Builders Ex-

change confined its Permit System to cement, lime, plaster, rock, sand, gravel and clay products, all state produced materials. Under this system, while such materials could not be purchased for use in San Francisco by those refusing to conform to the American Plan, there was no restriction whatever, after November, 1922, upon the purchase by anyone of plumbers' supplies, irrespective of their economic beliefs or practices.

Considerable space is devoted in the transcript to this matter. This was caused by the introduction in evidence of the transcript of testimony taken in the earlier case in the State court under the State Anti-Trust Act, in which the defendants were acquitted. Just prior to the filing of the information in the State court, there had been refusals to sell on the part of plumbers' supply houses, and for that reason much testimony on this point was introduced. Such evidence has no importance in this case, as is shown by the fact that it was ignored in the opinion and decree of the District Court. It merely shows a practice which had been abandoned six months before this suit was instituted. It is elementary that no injunction will issue under such circumstances.

United States v. United States Steel Corporation,
251 U. S. 417.

(i) Legal Proceedings Against Defendants.

More than two years after the struggle between the unions and the employers had commenced, more than two years after the permit system had been put into effect,

and many months after the plumbing supply houses had refused to sell to certain plumbers, this suit was commenced by the United States. The complaint was filed May 26, 1923. The decree was entered on December 19, 1923. During the long period preceding the filing of the complaint, the tide of industrial battle had ebbed and flowed. The general building strike was over in September, 1921, almost two years before the complaint was filed; only three unions, the Plasterers', the Plumbers' and the Painters', were on strike. In the plumbers' craft, ninety per cent of the men were union men and ten per cent were non-union. When the conflict was practically over, then, and not till then was this complaint filed.

In the course of the conflict the unions caused the arrest of certain of the defendants on the charge that they had violated the Cartwright Act. This is a Statute of California (Stats. of California, 1907, p. 984; amended, Stats. of California, 1909, p. 593) somewhat in the language of the Anti-Trust Act, covering the same subject matter, but from the standpoint of the State and looking to restraint of intrastate commerce as contrasted with interstate commerce. After a trial, the defendants were acquitted. The information in the Cartwright case was filed December 12, 1922, and the defendants were acquitted on May 9, 1923. It was after the State had refused to find that the defendants had restrained intrastate commerce that this suit was commenced by the United States in the United States District Court.

(j) Results of Establishment of American Plan on Industry.

When the conflict was over the conditions in San Francisco were:

1. The American Plan was in effect in the building industry, and any qualified workman could obtain work whether he was a member of a union or not.
2. The unreasonable restrictions on the training of apprentices no longer existed, and any willing boy could learn a trade.
3. The unreasonable and uneconomic restrictions on the use of mechanical labor saving devices and the limitation of the amount of work a man could do, were a thing of the past.
4. Building increased and commerce thrived. The building permits were:

Year	No. of Permits	Value
1920	5620	\$26,729,992
1921	6313	22,244,672
1922	8038	45,327,239
1923 (first 9 mo.)	7415	34,109,996

(p. 432).

The tonnage of shipping that arrived and departed was:

1921, 20,703,041 tons, cargo value \$994,227,353.00;

1922, 45,363,176 tons, cargo value \$1,976,133,-

506.00 (p. 433).

These were to a large extent the results of the activities of these defendants for which they are before this court on a charge of violating the Anti-Trust Act.

It is only proper to say in passing that the complainants attempted to show certain specific cases where interstate sales had been refused. These alleged instances are few in number, not to exceed ten, and are spread through the two-year period preceding the filing of the suit. It is the contention of these defendants that these alleged refusals to sell were not connected with the industrial controversy, and did not concern it or the defendants, but were cases of individual action by certain defendants, not for the purpose of affecting the industrial conflict, but for personal trade reasons. These instances will be dealt with later, and the evidence respecting them will be examined for the purpose of showing that they have no importance or significance in this case or any connection with the defendants.

Summary of Facts.

1. San Francisco was the scene of an industrial conflict.
2. The unions, to enforce the "closed shop" in the building industry, declared a general strike.
3. The defendants, thereupon, determined to establish the "American Plan", that is, the open shop, where no discrimination against workmen would be permitted by reason of membership or lack of membership in a labor union.
4. In furtherance of their aims, the members of the Builders Exchange refused to continue selling for use in San Francisco certain state produced materials to

the unions, or those acting in concert with them. To prevent confusion, permits issued by the Builders Exchange were required for such building materials. Small quantities of lime and plaster produced outside the state, were also under the Permit System, but in every instance the lime and plaster was in the warehouses in San Francisco at the time of the refusal to sell.

5. No permits were required save for sales in San Francisco of specified materials for building jobs in San Francisco and its immediate vicinity. All sorts of building materials and supplies were procurable at other places in California, and throughout the United States, without the requirement of Permits, and no Permits were required for any materials other than cement, lime, plaster, ready mixed mortar, brick, terra cotta and clay products and sand, rock and gravel, sold by the defendants.

6. There was no fixing of prices. There was no restriction of competition. Membership in the defendant associations was open and free to any person who desired to join, provided he would subscribe to their by-laws and principles. The defendants were all direct parties to the industrial conflict and the persons to whom they refused to sell were also direct parties to the conflict. Interstate commerce was not directly affected and the volume was not lessened. The acts of the defendants were legal and peaceful.

7. During the period in question there was increased activity in building, in trade, and in commerce. Since the termination of the industrial controversy there has

been no discrimination in the building industry in San Francisco against qualified workmen on account of membership or lack of membership in labor unions.

Argument.

I.

THE DECREE SHOULD BE REVERSED FOR THE REASON THAT THE EVIDENCE DOES NOT SHOW ANY VIOLATION OF THE ANTI-TRUST ACT.

Do the acts of the defendants constitute a contract, combination or conspiracy in restraint of interstate trade and commerce, and do they amount to a violation of the Anti-Trust Act?

The evidence shows that certain of the defendants, participants in a local industrial controversy, refused to sell certain state-produced materials and certain supplies which had ceased to be articles in interstate commerce, to those aligned on the opposite side of the industrial controversy; that such refusals were made in San Francisco; that the materials were to be used in San Francisco and vicinity; that there was no intent to affect interstate commerce, to fix prices or to stifle competition, and that the refusals had in fact no such effect.

The defendants contend that this evidence does not establish a violation of the Act for the following reasons:

1. The agreement was not intended to restrain interstate trade; it was not intended to fix prices or restrain competition; it had no commercial or trade *purpose*.

2. Its *effect* on interstate commerce was secondary, remote, incidental and slight, if there was any effect at all.
3. The situs and effect of the restraint, if any, were local.
4. The defendants were themselves direct participants in the industrial controversy and committed no unlawful acts.
5. The restraint upon interstate commerce, if any, was not unreasonable.

The evidence clearly shows these to be the facts. What is the law to be applied to these facts?

(a) Discussion of the Meaning and Application of the Anti-Trust Act, as Determined by the Cases in This Court.

PARTICIPANTS IN AN INDUSTRIAL CONFLICT, CONFINED TO A SINGLE CITY AND VICINITY, MAY REFUSE TO SELL BUILDING MATERIALS IN THAT CITY, TO THEIR OPPONENTS FOR USE IN THAT CITY, AND IF THERE IS NO INTENT TO RESTRAIN INTERSTATE COMMERCE, AND IF ANY EFFECT THEREON IS SLIGHT, INCIDENTAL AND REMOTE, THERE IS NO VIOLATION OF THE ANTI-TRUST ACT.

Article 1, Section 8, of the Constitution grants to Congress the power "to regulate commerce with foreign nations and among the several states and with the Indian Tribes". In the exercise of this delegated power, Congress enacted the Anti-Trust Act (26 Stat. 209).

The applicable provision of the Act reads:

"Section 1. Every contract, combination, in the form of trust or otherwise, or conspiracy, in re-

straint of trade or commerce among the several states is hereby declared to be illegal.”

Though by the terms of the Act every combination or conspiracy in restraint of trade and commerce among the several states is declared illegal, as interpreted by the decisions of this court, the Act condemns only those combinations which *directly and unduly* restrain interstate commerce.

American Column and Lumber Co. v. United States, 257 U. S. 377-400;

In *United States v. Union P. R. Co.*, 226 U. S. 61, 87, the law was condensed into this expression:

“To preserve from undue restraint the free action of competition in interstate commerce was the purpose which controlled Congress in enacting this statute, and the courts should construe the law with a view to effecting the object of its enactment.”

To come within the inhibitions of the Act, we must therefore find:

1. A restraint of interstate commerce;
2. A direct restraint of that commerce; and
3. An undue restraint of that commerce.

In order, however, to determine whether given acts do or do not fall within the forbidden sphere, it is necessary to determine the meaning of the words “directly”, “unduly” and “interstate commerce”.

The court was early met with the difficult duty of defining the scope of the Act. The first time the question was presented was in the *Knight* case in 1895 (*United States v. Knight*, 156 U. S. 1). There the defendants purchased sugar refineries in the State of Pennsylvania. The bill charged that the agreements under which these purchases were made constituted combinations in restraint of interstate commerce. The court held that the purchase of the refineries did not constitute a violation of the Act. It based its decree upon two grounds, (1) that the manufacture of sugar in Pennsylvania was not interstate commerce, and (2) that the purchase of the refineries in Pennsylvania did not have a direct effect on interstate commerce. The court recognized that a line had to be drawn at some point between commerce and manufacture, and between state commerce and interstate commerce. It said (156 U. S. 16):

“It was in the light of well settled principles that the Act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several states or

with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia Refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the states or with foreign nations. The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. * * * There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree."

Probably if the Government had averred and proved in this case that the purpose of the purchase of the Philadelphia refineries was only a step in a great scheme to monopolize the business of selling refined sugar among the states, the decision of the court would have been different. *Taft: The Anti-Trust Act and the Supreme Court*, p. 82.

It has been intimated that the *Knight* case with respect to the first point involved is very near the line (*Swift & Co. v. United States*, 196 U. S. 375). This may well be, but the *Knight* case does announce a proposition with regard to the second ground involved which has ever since been followed, namely, that, in order to constitute a violation of the Act the restraint must be direct, and a necessary consequence or a primary end of the acts complained of. Despite the criticism of the *Knight* case, the court has frequently relied upon the distinction pointed out in that case between manufacture and commerce. Thus in the *Coronado* case

(*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344) importance is given the fact that coal mining is not commerce, and in the *Herkert and Meisel* case (*United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 457) that manufacture is not commerce.

In the *Swift* case (*Swift & Co. v. United States*, 196 U. S. 375 (1905)), the court held that the defendants had violated the Act by agreeing not to bid against each other in the live stock markets, to bid up prices and to fix selling prices, all with the intent to monopolize interstate commerce and prevent competition. It was urged by the defendants that the sale and delivery of the cattle at the various stockyards, and their subsequent slaughter and preparation, was each in and of itself not an act of interstate commerce, and therefore not within the Act. The court, in disposing of this contention, said, p. 396:

“It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as parts of a single plan. The plan may make the parts unlawful. *Aikens v. Wisconsin*, 195 U. S. 194. The Statute gives this proceeding against combinations in restraint of commerce among the states and against attempts to monopolize the same. Intent is almost essential to such a combination, and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent,—for instance, the monopoly,—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. *Com. v. Peaslee*, 177 Mass. 267; 59 N. E. 55. But when that intent and the consequent dangerous probability

exist, this statute, like many others, and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result."

And again:

"Although the combination alleged embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote, or merely probable. On the allegations of the bill the latter commerce no less, perhaps even more, than commerce within a single state, is an object of attack. * * * Moreover, it is a direct object; it is that for the sake of which the several specific acts and courses of conduct are done and adopted. Therefore the case is not like *United States v. E. C. Knight Co.*, 156 U. S. 1, where the subject matter of the combination was manufacture, and the direct object monopoly of manufacture within a state. However likely monopoly of commerce among the states in the article manufactured was to follow from the agreement, it was not a necessary consequence nor a primary end. Here the subject matter is sales, and the very point of the combination is to restrain and monopolize commerce among the states in respect to such sales. The two cases are near to each other, as sooner or later always must happen where lines are to be drawn, but the line between them is distinct."

In the *Swift* case, the court marks the line. It is somewhere between the *Knight* case and the *Swift* case. The specific acts in both cases were done within a single state—but in the *Knight* case the subject matter is manufacture; in the *Swift* case it is commerce. In the *Knight* case no intent to restrain commerce is shown; in the *Swift* case the intent, and the "dangerous probability" is manifest. In the *Knight* case the effect on

interstate commerce was problematical; in the *Swift* case the effect was not "accidental, secondary, remote or merely probable"—it was direct.

The *Swift* case stands for this proposition: In order that acts performed within a single state may constitute a violation of the Anti-Trust Act, there must exist (a) an "intent" to restrain interstate commerce plus the "dangerous probability" that such commerce will in fact be restrained by the acts done, or (b) a "direct" effect upon such commerce from said acts (one not "accidental, secondary, remote or merely probable").

The meaning of "direct" is further illustrated in the *Hopkins* case and in the *Anderson* case. In those cases commerce, as such, was not the object, or indeed the subject, of the combination, and again we find the court refusing to say that the admitted incidental and remote restraint brought the defendants within the prohibition of the Act.

In the *Hopkins* case (*Hopkins v. United States*, 171 U. S. 578 (1898)), the defendants were engaged as commission men in buying and selling cattle at the Kansas City stockyards. Most of the cattle came from states other than Missouri, and after sale were shipped to still other states. The defendants were members of the Kansas City Livestock Exchange, and, in accordance with the rules of the Exchange, refused to deal with any person who was not a member of the Exchange. It was claimed that as a result, one who was not a member of the Exchange was prevented from doing business at Kansas City, that is, from enjoying the facilities of the

market which were enjoyed by members. The defendants showed that the Association engaged in no business; did not fix prices; that there was the freest competition between members and that anyone could become a member by accepting and agreeing to be bound by the by-laws.

The court held that the defendants had not violated the Act. The decision is based upon two grounds, (1) that the defendants were not engaged in interstate commerce, and (2) that any effect on interstate commerce was indirect and remote.

The court says (p. 592):

"The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate * * *."

"There must be some direct and immediate effect upon interstate commerce in order to come within the Act."

And again at p. 594:

"An agreement may in a variety of ways affect interstate commerce, just as state legislation may, and yet, like it, be entirely valid, because the interference produced by the agreement or by the legislation is not direct."

And at p. 600:

"The Act of Congress must have a reasonable construction or else there would scarcely be an agreement or contract among business men, that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it. We have no idea that the Act covers or was intended to cover such kinds of agreements."

The acts of the defendants admittedly had some effect upon interstate commerce. Interstate commerce, however, was neither the *subject* nor the *object* of their agreement. The defendants were interested in a local, personal concern, the proper conduct of their business as commission men in Kansas City. They were not thinking of interstate commerce, and had no commercial end in view. In the present case also we have a *local* agreement, not directed toward interstate trade, having a non-commercial object, and only indirectly affecting interstate commerce.

The *Hopkins* case was the subject of comment in the *Swift* case. In distinguishing the case, the court in the *Swift* case (196 U. S. 397), said:

“So again the line is distinct between this case and *Hopkins v. United States*, 171 U. S. 578. All that was decided there was that the local business of commission merchants was not commerce among the states, even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. They only furnished certain facilities for the sales. Therefore, there again the effects of the combination of the brokers upon the commerce was only indirect, and not within the Act. Whether the case would have been different if the combination had resulted in exorbitant charges was left open.”

The line of demarcation between the *Swift* case and the *Hopkins* case is plain. In the *Swift* case the subject of the agreement was interstate commerce; in the *Hopkins* case it was the regulation of a local commission business. In the *Swift* case the object of the combination was the restraint of interstate commerce;

in the *Hopkins* case it was the regulation of local business and rules of trading. In the *Swift* case the effect on interstate commerce was direct; in the *Hopkins* case it was "accidental, secondary, remote or merely probable".

In the *Anderson* case (*Anderson v. United States*, 171 U. S. 604 (1898)), the facts were very similar to those in the *Hopkins* case, save that unlike the *Hopkins* case, the defendants were themselves the buyers and sellers and not merely commission men. They were members of an association, which by its rules prohibited members from dealing with non-members. It was proved that the Association engaged in no business, did not fix prices, that there was the freest competition among its members, and that anyone could join by agreeing to be bound by the rules, one of which was a prohibition against dealing with a non-member. It was urged in behalf of the defendants that they were not engaged in interstate commerce. The court, however, refused to pass upon this point, stating that in its opinion it was immaterial whether or not the defendants were engaged in interstate commerce.

In holding that the defendants had not violated the Act, the court said (171 U. S. 615):

"It has already been stated in the *Hopkins* case, above mentioned, that in order to come within the provisions of the statute the *direct effect* of an agreement or combination must be in restraint of that trade or commerce which is among the several States, or with foreign nations. Where the subject matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the

purpose of the agreement was not to regulate, obstruct or restrain that commerce, but that it was entered into with the *object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged*, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object. As is said in *Smith v. Alabama*, 124 U. S. 465, 473: 'There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations.' The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and bona fide purpose of properly and reasonably regulating the conduct of their business among themselves and with the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement would be good. Otherwise, there is scarcely any agreement among men which has interstate or foreign commerce for its subject that may not remotely be said to, in some obscure way, affect that commerce and to be therefore void. We think, within the plain and obvious construction to be placed upon the Act, and following the rules in this regard already laid down in the cases heretofore decided in this court, we must hold the agreement under consideration in this suit to be valid." (Italics ours.)

The *Anderson* case was also the subject of comment in the *Swift* case, where it was said (196 U. S. 398):

“In *Anderson v. United States*, 171 U. S. 604, the defendants were buyers and sellers at the stock yards, but their agreement was merely not to employ brokers, or recognize yard-traders, who were not members of their Association. Any yard trader could become a member of the Association on complying with the conditions, and there was said to be no feature of monopoly in the case. It was held that the combination did not directly regulate commerce between the states, and, being formed with a different intent, was not within the act.”

The difference between the *Swift* and the *Anderson* cases is plain. In the two cases there were different objects, different subjects, a different effect. In the *Swift* case the subject of the agreement was interstate commerce, the object was the restraint of interstate commerce, there was a direct effect on interstate commerce. In the *Anderson* case the subject and the object were not interstate commerce, but the regulation of methods of dealing between the members of the Association, the effect on interstate commerce was “accidental, secondary, remote or merely probable”.

In the *Anderson* case persons engaged in interstate commerce (for the court says that if the defendants were engaged in interstate commerce its decision would be the same) agree among themselves not to deal with any person not a member of the Association; that is, they refuse to buy from or sell to anyone who does not subscribe to their principles of doing business. The similarity between the *Anderson* case and the case at bar is striking. In both the situs of the transaction is local; neither the object nor the subject is interstate commerce; there is no fixing of prices, no elimination of

competition, all persons may join the associations by agreeing to their rules.

Thus far we have shown that the court has limited the application of the Act to agreements which exercise a direct effect upon interstate commerce and where the intent or "dangerous probability" is to restrict that commerce.

(b) The Labor Cases Under the Anti-Trust Act.

The principles marking the limits of direct and undue restraint of interstate commerce receive further illustration from a consideration of the cases in this court under the Anti-Trust Act dealing with labor disputes, a group which may conveniently be termed the Labor Cases, namely: *Loewe v. Lawlor*, *Duplex v. Deering*, the *Coronado* case and the *Herkert & Meisel* case.

These cases may be conveniently grouped under the designation of Labor Cases for the reason that they arose, as does the case at bar, out of labor controversies. This fact is of importance for several reasons. In the first place, the participants in a labor controversy are not engaged in commercial activities, and their minds are not on trade and commerce. They are trying to win a war that has for its object something entirely different from trade and commerce. In the second place, the usual effect of a labor war upon interstate commerce is remote, incidental and secondary. That does not mean that the participants may not in some cases in the heat of conflict, change the immediate object and subject of their activities to interstate commerce. When they do, we have cases like *Loewe v. Lawlor* and *Duplex Co. v.*

Deering. But in the ordinary labor controversy we start out, at least, with something which has interstate commerce neither for its object nor its subject.

In the so-called *Danbury case* (*Loewe v. Lawlor*, 208 U. S. 274, (1908)), the plaintiffs manufactured hats at a factory in Connecticut, and sold the product generally throughout the United States, by far the largest part of the product being sold outside of Connecticut. The defendants were employees of plaintiffs who had struck to enforce their demands that the plaintiffs unionize their factories. The bill alleged that the defendants had conspired for the direct purpose of destroying plaintiffs' interstate trade by means of intimidation of and threats made to such manufacturers and their customers in the several states, of boycotting them, their product and their customers, until such time as from the damage and loss of business resulting therefrom the plaintiffs should yield to the demand to unionize their factories.

The court in holding that the bill alleged acts on the part of the defendants constituting a violation of the Act, said (p. 300):

"The averments here are that there was an existing interstate traffic between plaintiffs and citizens of other States, and that, for the direct purpose of destroying such interstate traffic, defendants combined not merely to prevent plaintiffs from manufacturing articles then and there intended for transportation beyond the State, but also to prevent the vendees from reselling the hats which they had imported from Connecticut, or from further negotiating with plaintiffs for the purchase and intertransportation of such hats from Connec-

ticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a state, and some of them were, in themselves, as a part of their obvious purpose and effect, beyond the scope of Federal authority, still, as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation, commenced, and, at the other end, after the physical transportation ended, was immaterial.

“Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that ‘every’ contract, combination, or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act, and that all these efforts failed, so that the act remained as we have it before us.”

In *Loewe v. Lawlor* the strikers to attain their ends, directly conspired to interfere with and obstruct plaintiffs’ interstate trade and their activities achieved the intended result. In other words, instead of devoting their attention to the immediate subject of the controversy with their employers, the question of unionizing their shops, the strikers intentionally entered into an agreement to destroy the interstate commerce of their employers and carried it out with such success as to destroy that interstate commerce. The primary object of their activities shifted from the fixing of working

conditions over to an interference with their opponents' interstate commerce. No more direct interference with interstate commerce could very well be imagined than in this case where the strikers set out intentionally to destroy the interstate commerce of their employers.

As to the degree of interference the court points out that it was primarily an attack upon interstate commerce, though a negligible amount of intrastate business might be affected.

The court commented on the *Knight*, the *Hopkins* and the *Anderson* cases as follows (p. 297):

"We do not pause to comment on cases such as *United States v. E. C. Knight Co.*, 156 U. S. 1; *Hopkins v. United States*, 171 U. S. 578, and *Anderson v. United States*, 171 U. S. 604, in which the undisputed facts showed that the *purpose* of the agreement was not to obstruct or restrain interstate commerce. *The object and intention of the combination determined its legality.*" (Italics ours.)

Loewe v. Lawlor stands for the proposition that in a labor controversy, if the strikers in an attempt to win, *intentionally* attempt to destroy the interstate commerce of their employers, and to that end engage in a *country-wide* conspiracy, they must be held to violate the Act. We have, in *Loewe v. Lawlor*, an agreement which has *interstate commerce* for its *direct* subject, and an intent to *destroy* it as its *direct* object. It is worthy of note that the agreement complained of included a secondary boycott, directed against persons who were not the immediate participants in the strike. It is difficult to imagine a case which comes more clearly within the Act.

The next labor case is *Duplex Co. v. Deering*, 254 U. S. 443 (1921). The plaintiff in this case was engaged in the manufacture of printing presses in Michigan. These presses were sold almost exclusively in states other than Michigan, being shipped to the place of ultimate use in parts, and there erected. The presses were large and complicated and required expert labor both in erection and repair. The defendants, who were not connected in any way with the plaintiff declared a strike at plaintiff's works in an attempt to unionize the workers, few of whom were members of the union. Only a few of the workers responded to the strike call and the plaintiff continued to manufacture presses. Thereupon defendants who were in New York declared and enforced a country-wide boycott of plaintiff's presses, threatening purchasers with loss and sympathetic strikes if they purchased from plaintiff, refusing to repair or erect presses and inciting persons engaged in transporting presses to strike. The acts were such as to prevent any commerce in plaintiff's presses.

The court held that the defendants had violated the Act, for they combined with the direct intention of destroying the interstate commerce of plaintiff and had succeeded in destroying that commerce.

The case resembles *Loewe v. Lawlor*, in that an intentional attempt is made to destroy the interstate commerce of the employer; the agreement involved an intent to destroy interstate commerce as its direct and primary object.

A labor case which falls upon the other side of the line from *Loewe v. Lawlor* and *Duplex Co. v. Deering*,

is the *Coronado* case (*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344). In this case the Coronado Coal Company operated a mine in Arkansas. Bache, the manager, determined to run the mine, after a certain date, upon a non-union or open shop basis. For this purpose he shut down the mine, intending to open it on a certain date as a non-union mine. Certain of the defendants, who were officers and members of the local miners union, declared a strike. In furtherance of their strike the guards at the mine were assaulted, property was destroyed, and in an attack on the mine several persons were killed. As a result of this activity on the part of the defendants the mine being unable to produce any coal was prevented from sending it out into interstate commerce.

The court held that the acts of the defendants did not constitute a violation of the Act, for the reason that it was necessary to establish that the acts of defendants were (p. 403) "with intent to restrain interstate commerce and to monopolize the same and to subject it to the control of the union".

The court held that coal mining was not interstate commerce (*Knight* case) and that Congress had not undertaken to regulate it as such (p. 408):

"It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision and restraint. Again, it has the power to punish conspiracies in which such practices are part of the plan to hinder, restrain, or monopolize interstate commerce. But in the latter case, the *intent to injure, obstruct, or restrain*

interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances." (Italics are ours.)

The court distinguished *Loewe v. Lawlor* on the ground that "the direct object of the attack was interstate commerce". *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600, was also distinguished on the ground that in that case "it was the commerce itself which was the object of the conspiracy".

With respect to the contention that the obstruction of coal mining necessarily restrained interstate commerce, the court said (p. 411):

"And so in the case at bar,—coal mining is not interstate commerce, and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material, and substantial effect to restrain it that the intent reasonably must be inferred."

Emphasis was laid on the fact that the strike and the lawlessness were local, (p. 411) "local in its origin and motive, local in its waging and local in its felonious and murderous ending". The court indicates that the product of the mines in question, about 5,000 tons a week, an inconsiderable amount in proportion to total production, could have no appreciable effect upon the price of coal or non-union competition. In conclusion the court stated that the evidence did not show that the

acts of the defendants "were committed by them in a conspiracy to restrain or monopolize interstate commerce".

In the *Coronado* case the interference with interstate commerce went so far as to involve the burning of a car loaded with coal destined for transportation and actually billed to purchasers in another state. Yet the court disposed of the argument that this conduct indicated a direct interference with interstate commerce by pointing out, (1) that no general purpose existed to impede commerce, and (2) that the car was used by the operator's guards during the riot as a defense and "its burning was only a part of the general destruction" (259 U. S. at p. 411).

The Chief Justice said:

"In the case at bar there is nothing in the circumstances or the declarations of the parties to indicate that Stewart, the president of District No. 21, or Hull, its secretary-treasurer, or any of their accomplices, *had in mind interference with interstate commerce or competition* when they entered upon their unlawful combination to break up Bache's plan to carry on his mines with non-union men. *The circumstances were ample to supply a full local motive for the conspiracy.*" (Italics are ours.)

And again:

"The circumstance that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators has no significance upon this head. The car had been used in the battle by some of Bache's men for defense. It offered protection, and its burning was only a part of the general destruction."

A second case involving the same acts which were the subject of consideration in the *Coronado* case but brought by another mining company is

United Mine Workers of America v. Pennsylvania Mining Company, 300 Fed. 965 (C. C. A. 8th Circuit, July 12, 1924).

It was attempted in that case to differentiate the *Coronado* case on the ground that an attempt made to blow up a railroad bridge on the spur track of the Missouri Pacific Railway Company might be distinguished from the destruction of the loaded railroad car in the earlier case, on the ground that the car was used by the operator's men for defense. Counsel for the Pennsylvania Mining Company argued that while the destruction of the car might be regarded as incidental, the attempted destruction of the bridge was a direct attempt to restrain interstate commerce. The Circuit Court of Appeals recognized that there was some difference in the two situations, but held that

"the attempted blowing up of the bridge was a part of the general destructive tactics employed, the same as the destruction of the car in the *Coronado* case. And while it bears on the question, of course, of intent, it is hardly adequate in itself to establish the direct intent upon the part of the alleged conspirators to restrain interstate commerce."

In

Finley v. United Mine Workers of America, 300 Fed. 972, 979 (C. C. A. 8th Circuit), July 12, 1924,

the plaintiffs attempted to show that not only had the car used for defense in the *Coronado* case been destroyed in the riot by the strikers, but that others had been burned, and that this had been done by independent attacks of the rioters. The Circuit Court of Appeals again adopted the views expressed in the *Coronado* case as to "general destruction" and held that the burning of cars engaged in interstate commerce did not necessarily show the "specific intent" required to establish the restraint of trade and commerce made the subject of the Anti-Trust Act.

The fact that interstate commerce was actually restrained to some degree as a result of industrial warfare, in the *Coronado* and other cases connected with it, even though the restraint was carried out by lawless means, was not sufficient to draw a local industrial conflict between labor and capital into the circle of jurisdiction of the national government. It may be conceded that such attempts and trespasses might be so numerous and so extensive as to warrant the interference of the national power, through its legislative, executive or judicial power, but national interests were scarcely involved in the incidental and slight interference with interstate commerce by the violent acts in connection with the coal strike in Western Arkansas. The case at bar is equally one involving local disputes and a local industrial conflict, but unlike the *Coronado* case it was carried on by peaceful and lawful means.

The *Coronado* case stands for the proposition that in a local strike, where the acts of the strikers prevent the mining of coal and its shipment in interstate com-

merce, and to that extent restrain interstate commerce, there is no violation of the Anti-Trust Act, if the acts are not committed with the intent and purpose of restraining interstate commerce, and if any such restraint of commerce is indirect and secondary. The case is the reverse of *Loewe v. Lawlor* and *Duplex Co. v. Deering*. In those cases the restraint of interstate commerce was the direct and primary object and interstate commerce was the subject of the agreement. In the *Coronac* case the defendants did not have in mind interstate commerce, they had in mind coal mining and wages. In the former cases the acts transcended state lines and interstate commerce was directly affected; their intent was transferred from local labor conditions to interstate commerce and a restraint of interstate commerce became their primary object. In the *Coronado* case the effect was purely local and interstate commerce was affected only incidently and remotely. In the *Coronado* case we have our attention called again, just as in the *Hopkins* and *Anderson* cases to the local character and effect of the acts complained of. We think this of much significance.

The most recent labor case is the *Herkert & Meisel* case (*United Leathers Workers v. Herkert & Meisel Trunk Company*, 265 U. S. 457 (decided June 9, 1924)). The plaintiffs in this case were trunk manufacturers in St. Louis. Almost the whole of the product of their factory was shipped in interstate commerce and they had contracts in hand for the sale to other states of more than a hundred thousand dollars of trunks. The defendants demanded that the factory be unionized and

conducted as a closed shop, and announced that if their demands were not acceded to they would ruin the interstate *business* of the plaintiffs. Thereupon a strike was declared, accompanied by assaults upon and intimidation of plaintiffs' employees, with the result that plaintiffs were compelled to cease to manufacture trunks, and their interstate business was interfered with and obstructed.

The court stated that the sole question was "whether a strike against manufacturers by their employees, intended by the strikers to prevent, through illegal picketing and intimidation, continued manufacture, and having such effect, was a conspiracy to restrain interstate commerce under the Anti-Trust Act because such products when made were to the knowledge of the strikers, to be shipped in interstate commerce, to fill orders given and accepted by would-be purchasers in other states, in the absence of evidence that the strikers interfered or attempted to interfere with the free transport and delivery of the products when manufactured from the factories to their destination in other states, or with their sale in other states".

The court decided the question in the negative and held that the acts of defendants complained of did not constitute a violation of the Anti-Trust Act. The court, following the reasoning in the *Coronado* case, held that manufacture was not commerce in and of itself; that the mere intentional cutting down of manufacture is not a direct restraint of commerce in the product intended to be shipped when ready; that the restraint to constitute a violation of the Act must be real and direct and not something incidental and remote.

After commenting upon the various leading cases, and pointing out that in the *Swift* case it was held that the acts constituted a restraint because of the intended obstruction of interstate commerce, the court said:

“The case rested wholly on the probably effective intent of the conspirators directed against interstate commerce.”

The court showed that in *Addyston Pipe Co. v. United States*, 175 U. S. 211, the defendants’ “intent and ability to control prices and prevent the public from having the benefit of competition in interstate trade brought them within the Federal Anti-Trust Act”. The *Hopkins*, the *Anderson* and the *Knight* cases are referred to and explained on the ground that the acts complained of were held not to be violations of the Anti-Trust Act because they did not reveal “the probably effective intent directly to compass the restraint on interstate commerce”. *Loewe v. Lawlor* and *Duplex Co. v. Deering* were distinguished because of the defendants’ “palpable intent to achieve their purpose by direct obstruction of that commerce”.

The court concludes with the statement:

“This review of the cases makes it clear that the mere diminution of interstate commerce by the illegal or tortious prevention of its manufacture, is an indirect or remote obstruction to that commerce. It is only when the intent or the necessary effect upon such commerce in the article is to enable those who intentionally diminish its product, to monopolize its supply or control its price or discriminate as between its would-be purchasers, that such unlawful diminution of its manufacture can be said directly to burden interstate commerce.”

It is to be observed that in the *Herkert & Meisel* case the allegations of the bill, which are not stated to have been denied or disproved in this respect, averred that defendants threatened, before their strike began, that if their demands were refused they would ruin plaintiff's interstate commerce (265 U. S. 457, 462). The court, however, disregarded this allegation and treated the case on the broad ground that the end aimed at by the strikers was not the destruction of the interstate commerce, but the winning of their objects regarding unionization of plaintiff's shops. In other words, the court regarded the ultimate purpose, not the secondary purpose. Compare with this analysis, what was said in the *Coronado* case respecting the "local motive" (259 U. S. at pp. 411 and 412).

Another allegation of the bill in the *Herkert & Meisel* case was regarded as more important. It was stated that the defendants had instituted a boycott which they were prosecuting by illegal means. The court found, however, that "there was no evidence whatever that any attempt was made to boycott the sales of the complainants' property in other states or anywhere or to interfere with their shipments of goods ready to ship" (265 U. S. at p. 463). This differentiated the case from *Loewe v. Lawlor*.

The *Herkert & Meisel* case is the counterpart of the *Coronado* case, and like the last named case resembles the case at bar. Both were *local* in their situs and effect; in neither case did the agreement of the defendants have interstate commerce for its subject matter, or the restraint of interstate commerce as its object; in both cases the effect on such commerce was incidental

and remote. It is also worthy of note that in both cases the defendants had employed illegal means—in the one case to prevent the mining of coal and in the other case to prevent the manufacture of trunks.

The decisions in the *Coronado* and *Herkert & Meisel* cases would seem to be inevitable, if the federal courts are not to take over the decision of practically every labor controversy. If it were to be held that the diminution in interstate commerce resulting from a strike or lockout in a factory engaged in the manufacture of goods which are to be later the subject of interstate commerce constitutes an unlawful restraint of interstate commerce, practically all strikes or lockouts would be within the Anti-Trust Act and this court must become the arbiter of every labor dispute. The court in the *Herkert & Meisel* case recognizes this, and adopts with approval the language of the dissenting opinion in the Circuit Court of Appeals, as follows:

“The natural, logical and inevitable result will be that every strike in any industry or even in a single factory will be within the Sherman Act and subject to Federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.” (284 Fed. 446, 464.)

From the decisions of this court, the following propositions are deducible:

1. That the restraints which are prohibited by the Act are those which are “direct”, and not those which are “accidental, secondary and remote”.
2. That in labor cases, if the subject matter of the combination is not interstate commerce, and if

the object is not the direct restraint of that commerce, but the accomplishment of non-commercial aims, there is no restraint of interstate commerce within the meaning of the Act, even though there be a diminution of interstate commerce.

3. That the situs, and extent of the restraint are important factors in determining whether the restraint is within the inhibition of the Act.

(c) In Order That a Restraint of Trade be Obnoxious to the Act, It must Constitute an "Undue" Restraint.

Not only must the restraint of interstate commerce be direct to come within the prohibition of the Anti-Trust Act, but it must also be "undue". "Undue" here means "unreasonable", and unreasonable in turn means "prejudicial to the public interest". So we may say that only such restraints as are prejudicial to the public interest are unlawful.

The so-called rule of reason was first announced in the *Standard Oil* case (*United States v. Standard Oil*, 221 U. S. 1), which held that the Anti-Trust Act does not prohibit acts which do not unduly restrain interstate commerce. In the *Standard Oil* case, Chief Justice White said:

"That in view of the many new forms of contracts and combinations which were being evolved from existing economic conditions, it was deemed essential by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation.

The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an interference,—that is, an undue restraint.”

The rule is well expressed in *Trenton Potteries Co. et al. v. United States*, 300 Fed. 550, at 553, where the court quotes from *Nash v. United States*, 229 U. S. 373, and says:

“In the well-known cases relied on by defendants, the court was not defining a civil injury; it was defining the phrase ‘in restraint of trade’. That is a very old phrase of the law; it became a term of art generations before the Sherman Act was enacted, and the cases cited are full authority for the proposition that, when that phrase was used by the Congress in this statute, it meant the same kind of restraint of trade that the law had known for generations, to wit, undue and unreasonable restraint; and when the highest court assigned this meaning to the phrase, that meaning applies, however and wherever the statute is invoked.

The point is not without authority, if any were needed. In *Nash v. United States*, 229 U. S. 373, 33 Sup. Ct. 780, 57 L. Ed. 1232, a demurrer was lodged to an indictment under the Sherman Law on the ground ‘that the statute was so vague as to be inoperative on its criminal side’ (page 376 (33 Sup. Ct. 781)), and this objection to the ‘criminal operation of the statute’ was thought to be warranted by the Standard Oil and Tobacco cases, *supra*. But Holmes J., for the court, speaking in a criminal case, declared that the cases last referred to ‘may be taken to have established that only such contracts and combinations are within the act as by reason of intent or the inherent nature of the con-

templated acts prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade'." (Italics are ours.)

The statement of the rule is much simpler than its correct application. When is a restraint undue or unreasonable? What restraints prejudice the public interest, and what do not? It would seem to be impossible to lay down any clearly defined rules for the determination of these questions. Certain things we do know constitute an "undue" restraint—such as monopoly, price fixing, and the elimination of competition. If there is a direct restraint with a purpose or effect to create a monopoly or to fix prices or to eliminate competition, the restraint is *ipso facto* unreasonable.

It is equally difficult to enumerate the cases where a direct restraint of interstate commerce is found to be reasonable and hence lawful.

The Chicago Board of Trade case would seem to be such a case (*Board of Trade v. United States*, 246 U. S. 231). In this case the defendants were charged with violating the Anti-Trust Act in this: They were members of the Chicago Board of Trade, and were prohibited by the rules from purchasing or offering to purchase, during the period from the close of the Board one day, until the opening on the next day, any grains "to arrive" at a price other than the closing bid at adjournment. The defendants attempted to introduce evidence showing that the purpose and effect of the

rule was not to prevent competition and that it resulted in hardship to no one. This evidence was refused.

In holding that the defendants had not violated the act, the court said (p. 238):

“The case was rested on the bald proposition that a rule or agreement by which men occupying positions of strength in any branch of trade fixed prices at which they would buy or sell during an important part of the business day is an illegal restraint of trade under the Anti-Trust Law. But the legality of an agreement or regulation cannot be determined by so simple a test as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint, and its effect, actual and probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation, or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences.”

The court then examined the evidence and concluded that “the evidence admitted makes it clear that the rule was a reasonable regulation of business, consistent with the provisions of the Anti-Trust Law”. The evidence showed that it applied only to a small portion of

the grain shipped; that it had no appreciable effect on market prices and that it in fact facilitated trading.

The *Board of Trade* case stands for the proposition that even though the court finds a restraint of commerce, it will examine the facts of the business involved, its condition before and after the restraint was imposed, the nature of the restraint and its effect, and the intention of the parties, and from all these will determine whether the regulation is reasonable or unreasonable and hence, whether or not it violates the Anti-Trust Act.

To pursue at length the question as to what are "undue" restraints would be of no real value in the consideration of the case at bar, for the decisions already mentioned have marked out clearly that certain agreements are not unlawful. It is our contention that the evidence in the case at bar shows that the acts of these defendants fall clearly within the lines laid down in these cases as not being violations of the Act.

We will summarize the law:

In order to constitute a violation of the Anti-Trust Act there must be:

- (1) A combination to restrain interstate commerce,
and
- (2) (a) A direct restraint (not "accidental, secondary and remote"), or
(b) A probably effective intent of restraining interstate commerce (a "dangerous probability" of so doing), and

- (3) An unreasonable restraint, and in the determination of this question the court will consider:
- (a) The intent.
 - (b) The scope of the restraint.
 - (c) The effect of the restraint.
 - (d) The territorial extent of the restraint.
 - (e) The lawfulness of the means employed.

(d) Application of Law to Facts in This Case.

Let us test this case by the law announced in the decisions of this court. It is claimed that in this case there was a conspiracy to restrain interstate commerce. What was the conspiracy and what was the restraint?

The Permit System was a system whereby San Francisco materialmen refused to sell in San Francisco building materials for use in San Francisco on non-American Plan jobs. A specially selected group of materials were chosen for its operation. The Permit System was not intended to apply to materials in other states or to goods in interstate commerce, nor did it apply to goods destined for use outside of San Francisco. The materials covered by the Permit System were: cement, lime, plaster, brick and clay products, and sand, rock, and gravel. All these materials, covered by the Permit System, were produced in the State of California. Some lime and some plaster, but inconsiderable in comparison with the entire supply used in San Francisco, were produced in nearby states by California corporations which brought them to their warehouses in San Francisco for sale. Such lime and plaster, produced outside of California,

and which were covered by the Permit System, were in all instances on hand in San Francisco in the warehouses of their producers when first made subject to the Permit System. Though, as heretofore indicated, the Industrial Relations Committee of the Builders Exchange suggested that certain other materials, some of them produced outside the State, be placed under the Permit System, this proposal was never ratified, never went into effect, and no permits were in fact ever required for these materials (pp. 445, 454, 457).

The question therefore narrows itself to this: Is a refusal to sell California produced materials in San Francisco for use in San Francisco on non-American Plan jobs, a violation of the Anti-Trust Act? Is the refusal to sell certain lime and plaster produced in other states which are at the time in warehouses in San Francisco, for use in San Francisco on non-American Plan jobs, a violation of the Anti-Trust Act?

The opinion of the learned Judge of the court below finds the facts substantially as stated by us (pp. 34-37). He points out briefly the controversy over the closed shop and the American Plan, and asserts his inability to deal with the merits or demerits of the plan because of its intrastate nature. He says he cannot deal with the "end" to be attained, and only with the "means" employed to attain that end, so far as those means are condemned by federal statutes. He outlines the Permit System and the limitation of that system to the purchase and sale of building materials of local origin. His finding that the Industrial Relations Committee of the Builders Exchange placed in their list certain other

materials that were not of local origin, is accompanied by a statement that permits were never required for the purchase of such materials. In addition, as pointed out above, this action taken more than ten months before the bill of complaint was filed, was never ratified and never became effective. The fact found by the court that the Industrial Relations Committee recommended that "if necessary" the Permit System would be extended "to all other materials used in the building trades", is immaterial. It was not so extended. This recommendation of the Committee at most was a threat, much less harmful than the boasts of the strikers in the *Herkert & Meisel* case that they would destroy the employers' interstate commerce. Mere intent without overt act or a reasonable probability of putting it into effect is outside the field of judicial interference.

The court's chief insistence is, however, not upon a proposed plan that never became effective. The learned Judge finds a fact which is not disputed, and upon which he chiefly bases his action in granting the decree. It is, in the words of the court, as follows:

"A third outstanding fact is that plumbers' supplies which are manufactured for the most part without the State, while not directly under the Permit System were just as effectively dealt with by the simple process of refusing a permit to purchase the materials that were under the system, to anyone who employed a 'bad plumber', that is to say, one who was not operating under the American Plan."

The theory of the learned Judge is that because an owner of a building lot or his building contractor could not buy local products, such as sand, cement, brick, plat-

ter, gravel and the like, unless he employed non-union men as well as union men, on his building operations, there was a restraint upon building operations and therefore upon the sale and purchase of goods and supplies used in buildings and brought from other states. In fact after November, 1922, any person might purchase plumbing supplies freely and in any quantities desired. To be sure, he might be embarrassed in completing a structure with the products then purchased, because of the practical difficulty of buying other products of purely local origin required to constitute a complete house. But the fact that such a person might not be able to use goods formerly in interstate commerce after he had purchased them, unless he changed his industrial relations with regard to his neighbors in San Francisco, is not a restraint on commerce. If San Francisco were in the hands of a riotous mob, interstate commerce would be interrupted, because local business would be suspended. Yet from this alone, no one would contend that interstate commerce was restrained within the meaning of the Anti-Trust Act. If the carpenters strike in the same city, they tie up building. Are they amenable to the United States Anti-Trust Act because as a result of the tie-up owners and contractors stop buying tools and materials made in Pennsylvania and Connecticut? Any restraint resulting from such conduct as that of the rioters or the strikers in the cases mentioned, or the members of the Builders Exchange in the present case, is only remote and indirect and wholly incidental to a local conflict having no relation to commerce. Indeed there was in fact no restraint whatever if the situation is viewed as a totality and not

from the point of view of one who wanted to employ union labor and none other. Building went on, in fact, with renewed activity and the market for the products of goods produced at home and elsewhere was larger and more active than under the old closed shop conditions.

Reduced to its lowest terms, the court's decree based on this finding restrains defendants from refusing to sell their own products made in California to fellow Californians whom they regard as "bad", on the ground that if they continue the refusal they will affect the desire of the "bad" men to buy other wares made in Ohio or Illinois. We say their "desire" to buy for concededly they had the "power" to buy, if they wanted to do so.

It seems clear that the acts and agreements of the defendants as to state produced materials do not directly restrain interstate commerce inasmuch as they are confined to goods which have their origin and are destined for ultimate consumption in a single state. As a matter of fact, the refusal to sell state goods in San Francisco, for consumption in San Francisco, could have no other effect than to increase the consumption and use of interstate goods, and to that extent to stimulate interstate commerce rather than to restrain it. In any event, a consideration of the decisions reveals that any restraint, such as might result from such acts or agreements is not a restraint prohibited by the Act.

The decisions of this court have made it clear that agreements which result in the restraint of intrastate, as distinguished from interstate commerce are not within the Act, and that the court acquires no jurisdiction

over that part of a combination or agreement which relates to commerce wholly within a state, by reason of the fact that the combination also covers commerce which is interstate. In *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, the court, in limiting the injunction to combinations which are interstate in character and to that extent modifying the decree of the lower court, said:

“The views above expressed lead generally to an affirmance of the judgment of the court of appeals. In one aspect, however, that judgment is too broad in its terms—the injunction is too absolute in its directions—as it may be construed as applying equally to commerce wholly within a state as well as to that which is interstate or international only. This was probably an inadvertence merely. Although the jurisdiction of Congress over commerce among the states is full and complete, it is not questioned that it has none over that which is wholly within a state, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a state, by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the state. The combination herein described covers both commerce which is wholly within a state and also that which is interstate.

“In regard to such of these defendants as might reside and carry on business in the same state where the pipe provided for in any particular contract was to be delivered, the sale, transportation, and delivery of the pipe by them under that contract would be a transaction wholly within the state, and the statute would not be applicable to them

in that case. They might make any combination they chose with reference to the proposed contract, although it should happen that some non-resident of the state eventually obtained it."

As to the refusal to sell in San Francisco for use in San Francisco, small quantities of lime and plaster produced in other states, it is equally clear that such refusals did not constitute a violation of the Act. Such goods at the time of the refusals had ceased to be in interstate commerce. It is true that some of the lime and plaster had once been the subject of interstate transportation, but in every instance of a refusal to sell, the actual lime or plaster was in the warehouse of the dealer in San Francisco. As no refusals were made save as to materials to be *used in San Francisco*, it is apparent that the materials had in truth come to their final resting place and were no longer in interstate commerce.

"When freight actually starts in the course of transportation from one state to another it becomes a part of interstate commerce. The essential nature of the movement and not the form of the bill of lading, determines the character of the commerce involved. And generally when this interstate character has been acquired it continues, at least until the load reached the point where the parties originally intended that the movement should finally end."

Illinois Cent. Ry. v. De Fuentes, 236 U. S. 157, 163.

See also,

Public Utilities Comm. of Kansas v. Landon, 249 U. S. 236.

The materials here are not like the cattle in the *Swift* case or in *Stafford v. Wallace* (258 U. S. 495), where it was found that

"the stockyards are not a place of rest, or destination * * *. They are but a throat through which the current flows and the only transactions which occur therein are only incident to the current from the West to the East and from one state to another."

The sales in the present case were not in the current of interstate commerce, the transit had stopped for all time. The materials were at their ultimate destination, never more to move out into interstate commerce.

In *Brown v. Huston*, 114 U. S. 622, the court upheld a tax imposed by Louisiana upon coal imported from another state for sale in Louisiana, basing its decision that the tax did not affect the free and unrestrained flow of interstate commerce upon the fact that the tax

"was imposed after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year or two years or only for a day. It had become a part of the general mass of property in the state * * *."

In the case of the Permit System, the materials had either never been out of the state and never would be, they had never been and never would be in interstate commerce; or the materials had reached their final destination and resting place, had become part of the general property in the state and were destined never again to go into interstate commerce.

We are dealing therefore with materials which are not in *interstate commerce*. This fact is of great importance just as it was in the *Coronado* and *Herkert & Meisel* cases.

Under the decisions of this court the Permit System does not violate the Anti-Trust Act, for it does not directly restrain interstate commerce, nor is it shown to be unreasonable.

In the *Knight* case (*United States v. E. C. Knight Co.*, 156 U. S. 1), the court announced certain principles which have never since been questioned. They may be summarized as follows:

Although acts or agreements may inevitably affect interstate commerce, this fact does not necessarily render them unlawful restraints of such commerce. If the effect of such acts or agreements upon interstate commerce is but secondary, indirect or remote, the acts or agreements are not within the prohibition of the Act.

It was held that manufacture was not commerce and that a restraint thereon was not, of itself, a restraint of interstate commerce.

In the *Coronado* case (*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344), it was held that obstruction of coal mining, though it inevitably prevented coal from going into interstate commerce, was not of itself an unlawful restraint of interstate commerce, because the effect upon interstate commerce was remote, secondary and incidental.

In the *Herkert & Meisel* case (*United Leather Workers v. Herkert & Meisel*, 265 U. S. 457), striking, picket-

ing and intimidations by strikers prevented the manufacture of leather goods and their shipment into interstate commerce. It was held that these acts did not constitute an unlawful restraint of interstate commerce. As in the *Knight* and *Coronado* cases, the effect upon interstate commerce was remote, secondary and incidental.

In each of these cases the effect upon interstate commerce was inevitable. In each there was an unbroken chain of cause and effect. Yet in every case the restraint was held not to be a restraint in violation of the Act for the reason that it was merely secondary, remote, indirect and incidental. In every case the intent of the parties was directed at manufacture or production—something other than commerce.

In the case at bar the defendants attempted to establish certain building conditions in San Francisco. If the *manufacture* and *production* of materials, even though they may ultimately go into interstate commerce, are not of themselves interstate commerce, and a restraint thereon is not of itself an unlawful restraint of interstate commerce, no more is the refusal to sell materials for the erection of buildings in San Francisco, even though it may affect the *consumption* of materials which have at one time been in interstate commerce, in and of itself, an illegal restraint of such commerce. Any effect upon interstate commerce that may result from restraints upon such building construction is, just as in the manufacturing and mining cases, merely secondary, remote, indirect and incidental.

In the *Knight*, the *Coronado*, and the *Herkert & Meisel* cases, the acts, in and of themselves, did not constitute direct restraints of interstate commerce; nor could they be tied to interstate commerce by the intent of the parties, for it was found that the intent of the parties there was directed at something other than commerce, namely, manufacture and mining. Here the acts in and of themselves do not constitute restraints of interstate commerce. A restraint upon building construction is not a restraint on interstate commerce. A restraint upon the sale in San Francisco of goods for ultimate consumption in San Francisco is not of itself a restraint on interstate commerce. Nor can these acts be tied to or connected with interstate commerce by the intent of the parties, for here the intent of the parties was directed at something *other* than interstate commerce, namely, the establishment of proper labor conditions in the building industry in the City of San Francisco. What the defendants had in mind was not trade or commerce, prices or profits. The defendants acted for the purpose of freeing the building industry in a single city from unreasonable and uneconomic building conditions. They had no intention to restrain interstate commerce or to affect it in any way. They did not fix prices and they did not limit competition.

In the cases referred to, as in the case at bar, the parties were engaged in activities beyond the limits of interstate commerce, which affected goods either before they entered upon interstate commerce or after they had ceased to be in interstate commerce. There was no intent

to affect or restrain interstate commerce, to fix prices or to restrict competition.

But the decisions of this court, involving restraints upon the activities of persons engaged in occupations directly touching upon interstate commerce, announce that even in such cases there may be no violation of the Act.

In the *Hopkins* case (*Hopkins v. United States*, 171 U. S. 578), an organization of commission men in the Kansas City live stock market adopted rules and regulations for the conduct of their business, one of which prohibited them from dealing with non-members. The court held that the services of the brokers were services collateral to interstate commerce and that therefore the agreement was not a violation of the Act, even though it dealt with property in the very course of interstate commerce.

In the *Anderson* case (*Anderson v. United States*, 171 U. S. 604), the members of the Livestock Exchange, who were themselves buyers and sellers of cattle, adopted a rule prohibiting members from dealing with non-members. It was held that this did not violate the Act, although the operation of the rule might affect interstate commerce, for there was no price fixing, no restriction of competition, and a refusal to deal with persons who would not subscribe to just rules did not have any direct or appreciable effect on interstate commerce.

In the *Chicago Board of Trade* case (*Chicago Board of Trade v. United States*, 246 U. S. 231), the members

of the Board of Trade were bound by the last bid at call as the price for grain "to arrive" until the opening of the next session the following morning. The lower court held that as this fixed prices during an important part of the day, it was an illegal restraint upon interstate commerce. But this court held that the rule was merely a reasonable regulation of the conduct of the business of the members of the Board. The arrangement was merely the fixing of just and fair rules and constituted a reasonable basis upon which the members engaged in a certain business might compete against one another in their trading. There was no combination, no monopolization, and no fixing of prices for private profit.

The similarity of the case at bar to the *Hopkins* and the *Anderson* cases is striking. In all three cases the agreements were local, they were limited to one locality in a single state. The subject matter of the agreements was not trade or commerce, but *the regulation of methods of doing business*. The intent of the parties was not to restrain interstate commerce. The agreements did not fix prices or limit competition. Membership in the Associations was open to all who would abide by the rules. The effect upon interstate commerce in all three cases was incidental, secondary and remote. As a matter of fact any possible restraint in the *Hopkins* and *Anderson* cases would have been much more direct than it possibly could have been in this case, for in those cases the goods with which the defendants were dealing were cattle in the very midst of interstate transportation, while in the case at bar

most of the goods had never been, and would never go beyond the borders of the state, and the remainder were goods which had come to rest for all time in the City of San Francisco.

The similarity between this case and the *Coronado* and *Herkert & Meisel* cases is also striking. All are labor cases, and arose out of industrial controversies. The parties did not have interstate commerce in view, they thought only of conditions of labor. There was no intent to restrain commerce. The acts were local, being in each case confined to a single portion of a single state. In the *Coronado* case coal mining was affected, in the *Herkert & Meisel* case it was the manufacture of trunks, neither of which, under the authority of the *Knight* case, is interstate commerce in and of itself. And in the case at bar building and building conditions are not interstate commerce. The effect on interstate commerce in those cases as in this is secondary, remote and incidental. Indeed the restraint in the two named cases was much more direct than it could possibly be in the present one. Diminution in interstate commerce was almost sure to follow the cessation of coal mining and manufacturing. In this case there has been no diminution or restraint of interstate commerce, and there is no evidence that anyone engaged in interstate commerce suffered any abatement of his business, or that prices or competition were in anywise affected.

The effect of the defendants' activities has been to put the American Plan in effect in San Francisco. It is no longer a closed shop city. No qualified worker

is discriminated against on account of membership or lack of membership in a labor union. Building has increased, bank deposits have grown, shipping has almost doubled since the American Plan has become the rule governing the building trades.

The case presented in the record is that of a local industrial conflict. The defendants are direct participants. They contend for the establishment of the "American Plan" in the building industry, the right of every competent worker to employment irrespective of whether he belonged to a union or not. They make no discrimination against union men, their only quarrel is against the closed union shop. In the course of battle, when met by strikes by the union men for the closed shop, these defendants refuse to sell specified building materials in San Francisco to their enemies for use on any closed shop jobs in San Francisco and vicinity. Such materials with the exception of certain lime and plaster are all produced within the state. The lime and plaster at the time of the refusal to sell are in the warehouses in San Francisco. Trade and commerce and building do not stop. Building increases and commerce thrives. The defendants commit no unlawful acts in the conduct of their battle.

Can it be maintained that the acts of the defendants constitute an undue restraint on interstate commerce, in a case where interstate commerce is neither the subject nor the object of the agreement, where any effect on interstate commerce is incidental, secondary and remote, where the situs and effect of the acts are

local and where the result and effect are not detrimental to the public interest?

If these facts justify the application of the Anti-Trust Act, it can fairly be said that every participant in a local labor dispute who seeks to protect himself by refusing to sell goods to or to buy goods from his enemy has violated the Anti-Trust Act, and is subject to the jurisdiction of the United States Courts.

If such a rule be applied, it should be applied to the striker as well as to the employer. The act of the employee in striking and thus preventing the use and consumption of goods which have once been the subject of interstate transportation, or the manufacture of goods which would in the normal course of events go out into interstate commerce, must be equally unlawful. But the decisions of this court rightly say that such acts are not unlawful and we submit that these decisions as well as the other decisions cited, clearly show that the acts of the defendants do not constitute a violation of the Anti-Trust Act.

II.

THE DECREE IS VAGUE, INDEFINITE AND UNCERTAIN AND DOES NOT SET FORTH THE ACTS OR TRANSACTIONS WHICH ARE FORBIDDEN. IT IS A SWEEPING INJUNCTION TO OBEY THE LAW AND PUTS THE WHOLE CONDUCT OF THE DEFENDANTS AT THE PERIL OF A SUMMONS FOR CONTEMPT.

Not only is the decree not justified by the evidence, but its provisions are so broad and indefinite as to constitute error.

The decree is couched in such terms that it is impossible to determine what the defendants may do and what they may not do; what is lawful and what is unlawful. In effect "it is an injunction to obey the law." The defendants are left wholly in the dark as to the specific acts enjoined, and as to the limits of the operation of the injunction. They are therefore unable to conduct themselves so as to protect themselves against summons for contempt.

The bill in this case charged that the defendants violated the Anti-Trust Act in that they combined to restrain interstate commerce. The bill alleged that divers means and methods were used by the defendants in the furtherance of their conspiracy, such means and methods being specified in thirteen separate items (pp. 3 and 4). The evidence fails to show that the defendants employed any of the specified means and methods, with the exception of attempting to render effective the American Plan, and of employing the Permit System. The bill therefore is of no value or assistance in interpreting the decree of the court so as to render it more certain.

The court in its opinion and order expressed itself as follows (p. 34):

"The defendants will not be dissolved nor their general activities interfered with, but a decree will be entered enjoining them from requiring any permit for the purchase of materials or supplies produced without the state and coming here in interstate commerce, or for making as a condition for the issuance of a permit any regulation that will interfere with the free movement of plumbers' or

other supplies produced without the state. They will also be enjoined from attempting to prevent or discourage any person without the state from shipping goods to any person whatever within the state."

The decree follows exactly the language of the opinion. It provides (p. 38):

"That the said defendants and each of them, and their members, officers, agents, servants and employees, and all persons acting under, through, by or in behalf of them, or any of them, or claiming so to act, be and hereby are perpetually enjoined, restrained and prohibited, directly and indirectly, individually and collectively, from

"(a) Requiring any permit for the purchase, sale or use of building materials or supplies produced without the State of California and coming into said State of California in interstate or foreign commerce.

"(b) Making as a condition for the issuance of any permit for the purchase, sale or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without said State of California.

"(c) Attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within said State of California.

"(d) Aiding, abetting, or assisting, directly or indirectly, individually or collectively, others to do any or all of the matters or things herein set forth."

The perplexity in which the defendants find themselves is that they do not know and cannot ascertain from an examination of the decree what they must do to obey it, nor what they are permitted to do under

its terms. The limits of the operation of the decree are not clearly defined, and the defendants are at a loss to know whether or not a particular act or acts will place them in peril of proceedings for contempt.

The court has spoken upon the subject in the case of *Swift & Co. v. United States*, 196 U. S. 375. There it was said:

“The general objection is urged that the bill does not set forth sufficient definite or specific facts. This objection is serious, but it seems to us inherent in the nature of the case. The scheme alleged is so vast that it presents a new problem in pleading. If, as we must assume, the scheme is entertained, it is, of course, contrary to the very words of the statute. Its size makes the violation of the law more conspicuous, and yet the same thing makes it impossible to fasten the principal fact to a certain time and place. The elements, too, are so numerous and shifting, even the constituent parts alleged are, and from their nature must be, so extensive in time and space, that something of the same impossibility applies to them. The law has been upheld, and therefore we are bound to enforce it notwithstanding these difficulties. *On the other hand, we equally are bound, by the first principles of justice, not to sanction a decree so vague as to put the whole conduct of the defendants' business at the peril of a summons for contempt. We cannot issue a general injunction against all possible breaches of the law. We must steer between these opposite difficulties as best we can.*” (Italics ours.)

There the decree was that the defendants be enjoined from entering into or performing any contract, combination or conspiracy the purpose or effect of which was to restrain trade and commerce in fresh meats among the

several states in violation of the Act either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of livestock; or collusively, and by agreement, to refrain from bidding against each other at the sales of livestock; or by combination, conspiracy or contract raising or lowering prices or fixing uniform prices at which said meats would be sold either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats the effect of which rules was to restrain competition; or by imposing uniform charges for carriage and delivery of such meats to dealers and consumers the effect of which was to restrict competition, or by any other method or device the purpose and effect of which was to restrain commerce as aforesaid. In respect to the decree the court said:

“The general words of the injunction ‘Or by any other method or device the purpose or effect of which is to restrain commerce as aforesaid’ should be stricken out. *The defendants ought to be informed as accurately as the case permits what they are forbidden to do.* Specific devices are mentioned in the bill and they stand prohibited. The words quoted are a sweeping injunction to obey the law and are open to the objection which we stated at the beginning that it was our duty to avoid. To the same end of definiteness so far as attainable the words ‘as charged in the bill’ should be inserted between ‘dealers in such meats’ and ‘the effect of which rules’; and two lines lower, as to charges for cartage, the same words should be inserted ‘dealers and consumers’, and ‘the effect of which’.”

And later the court adds:

"It only remains to add that the foregoing question does not apply to the earlier sections which charge direct restraints of trade within the decisions of the court, and that the criticism of the decree, as if it ran generally against combinations and restraint of trade or to monopolize trade ceases to have any force when the clause against 'any other method or device' is stricken out, so modified it restrains such combinations only to the extent of *certain specified devices* which the defendants are alleged to have used and intend to continue to use." (Italics are ours.)

The position of the defendants in the present case may be expressed in the language of the opinion in the *Swift* case, "the defendants ought to be informed as accurately as the case permits what they are forbidden to do". While difficulties are presented in framing the decree in this case, they do not approach those involved in the *Swift* case. First, the matters here involved are not nearly so vast in extent, being confined to a single city. Second, the facts for the most part are not in doubt. The American Plan and the Permit System are not disclaimed by the defendants but are contended by them to be entirely lawful and permissible. The remainder of the case is composed of a few trivial instances of alleged refusals to sell.

(a) The Decree is Too Broad in Its Application to Materials Coming From Without the State.

In paragraph (a) of the decree the defendants are enjoined from "*Requiring any permit for the purchase, sale or use of building materials * * * produced without the State of California and coming*

in to said state in interstate or foreign commerce". A literal application of this language would mean that goods produced without the state and coming into it in interstate commerce would forever continue to be subject to the injunction, no matter how many times they had been sold, and no matter how far they might be removed from the stream of interstate commerce. Interstate goods, under the language of the decree would never cease to be interstate goods; they would never become part of the general goods of the state so as to be the subject of state commerce or state regulation.

It is clear that interstate goods at some point do become part of the general goods in a state, and do cease to be the subject of federal jurisdiction. But the decree takes no account of this fact. There is a point beyond which the requirement of permits would not be an unlawful interference with interstate commerce. That point must be when the goods themselves cease to be "in interstate commerce". The decree should mark this point. In *Duplex Co. v. Deering*, 254 U. S. 443, the court was careful to confine the application of its decree to goods in interstate commerce when it restrained the defendants "from interfering or attempting to interfere with the sale, transportation, or delivery *in interstate commerce* of any printing press or presses * * *" by certain specific acts. The decree not only was limited to goods "in interstate commerce" but was limited to such interferences by certain specified acts.

(b) The Decree is Erroneous in Restraining the Permit System so Far as It Affects State Materials.

In paragraph (b) of the decree the defendants are enjoined from making as a condition for the issuance of any permit for the purchase, sale or use of building materials, any regulation that "*will interfere with the free movement of building materials, plumbers' or other supplies produced without the State of California*".

The decree must be read with the opinion of the court. So read, it is clear that the learned Judge of the court below had in mind in this portion of the injunctive relief granted by him, the purpose and intent to enjoin these defendants, engaged in selling products which were wholly of local origin and destination, from refusing to sell their products to persons in San Francisco to whom they did not wish to sell them. The judge's opinion clearly shows that this is the purpose of this part of the decree. The decree is merely putting into judgment his view that to refuse to sell sand to a contractor who employs "bad plumbers" is to lessen the probability that the contractor will want to buy Standard bath-tubs or Pittsburgh heaters or American radiators, or any other non-domestic products, because without sand, mortar and the like materials he can't build the house in which they would be installed.

Even without reference to the judge's opinion, it is obvious, however, that the purpose must be to enjoin the sale of local products to local customers in San Francisco under the Permit System. For not only is that system referred to—a system which the judge found to

be a local one—but the language of this part of the decree must be contrasted with Paragraph a (p. 38), which enjoins the requirement of a permit for the purchase, sale or use of building materials brought into California from other states. The present paragraph enjoins making as a condition for the issuance of any permit for the purchase, sale or use of building materials or supplies (“local” as contrasted with “interstate”) any regulation that will interfere with the free movement of building materials, plumbing or other supplies (for which no permit was required or employed) produced without the state.

As has been pointed out, the decree in this respect goes beyond any permissible interference with the local and internal concerns of the community under the guise of the commerce clause. The decree in this respect is wholly void, because beyond the power of the court under the Anti-Trust Act.

In *Addystone Pipe & Steel Co. v. United States*, 175 U. S. 211, the court modified the injunction granted by the lower court so as to limit it to that portion of the combination or agreement which was interstate in its character, saying:

“In one aspect, however, that judgment is too broad in its terms—the injunction is too absolute in its directions—as it may be construed as applying equally to commerce wholly within a state as well as to that which is interstate or international in character. This was probably an inadvertence merely. Although the jurisdiction of Congress over commerce among the states is full and complete, it is not questioned that it has none over that

which is wholly within a state, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a state, by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the state."

If, however, it be urged that something less extensive is involved than the court's theory about the interconnection between the restraint of building operations as against certain persons and the movement of interstate commerce, the defendants are entitled to know to what conditions they may and what they may not exact for the issuance of permits for the sale of building materials. Inasmuch as they did not demand any conditions affecting the free movement of interstate goods, they are left wholly uninformed as to the extent of allowable conduct with reference to the Permit System.

(c) The Decree is Too Vague in Its Prohibition of "Attempts to Prevent, or Discourage Interstate Shipments".

In paragraph (c) of the decree the defendants are enjoined from "*attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within the State of California*". Literally interpreted this would prevent one of the defendants from writing to a friend in another state to tell him not to ship goods to California because business or industrial conditions were poor.

It would prevent one of the defendants from telling a friend in another state of the industrial controversy in San Francisco, as a result of which the friend might decide not to ship goods to California. It comes perilously near to being a restriction upon the freedom of speech.

In *New Haven R. R. v. Interstate Commerce Commission*, (1906) 200 U. S. 361, 404, counsel for the Commission objected to the injunction granted because it merely restrained the defendants from carrying out specific contracts regarding rates, whereas, it was claimed, it should have enjoined them from giving the railroad company or other persons, any undue or unreasonable advantage. Mr. Justice White said:

"The proposition is that by the effect of a judgment against a carrier concerning a specific violation of the act, the carrier ceases to be under the protection of the law of the land, and must thereafter conduct all its business under the jeopardy of punishment for contempt for violating a general injunction. To state the proposition is we think to answer it. * * * The injunction which was granted in the case of *Re Debs*, 158 U. S. 564, was not open to such an objection, as its terms were no broader than the conspiracy which it was the purpose of the proceeding to restrain. To accede to the doctrine relied upon would compel us, under the guise of protecting freedom of commerce, to announce a rule which would be destructive of the fundamental liberties of the citizen."

Defendants submit therefore that entirely aside from the question as to whether or not the decree of the lower court should be reversed upon the evidence, the

decree is in such form as not to advise the defendants as specifically as the case permits as to the acts which are forbidden, and for that reason error was committed.

In fact, the vice in the decree is inherent in the very nature of complainants' case. The lower court erred not so much in the framing of the decree as in entering any decree at all against the defendants.

III.

AS TO CERTAIN OF THE DEFENDANTS, THE EVIDENCE WHOLLY FAILS TO SHOW ANY PARTICIPATION IN ANY OF THE ACTS OR THINGS COMPLAINED OF OR ANY CONNECTION THEREWITH. THE COURT THEREFORE COMMITTED ERROR IN ENTERING ITS DECREE AGAINST SUCH DEFENDANTS.

Of the forty-nine defendants in this suit, there are ten who did not participate in any way in any of the acts or transactions which are the basis of the suit, and who are not connected therewith in such a way as to justify any decree against them.

a. As to two of these defendants, namely, Builders Exchange of San Jose, and Bethlehem Shipbuilding Corporation, the record contains absolutely no evidence of any kind. They are not even shown to be members of one or the other of the principal defendants, the Builders Exchange or the Industrial Association of San Francisco. By reason of the total lack of any evidence against them, the decree should be reversed as to them.

b. As to one other defendant, Grinnell Company, Inc., the evidence shows that it was in no wise con-

needed with any of the acts or transactions which formed the basis of the suit. It is not a member of the defendant associations. The Grinnell Company Inc., is a Rhode Island corporation, and according to the evidence has no connection whatever with the Grinnell Company of the Pacific which is also named as a defendant. Evidently the theory of the complainant was that the Grinnell Company of the Pacific, a San Francisco plumbing supply house, was the local agent of and was owned by the Grinnell Company, Inc., and for that reason the Grinnell Company, Inc., was responsible for and bound by the acts of the Grinnell Company of the Pacific. In an attempt to establish a connection between the two companies the affidavit of Coefield (p. 57) president of the Plumbers' Union was introduced. This alleged that the Grinnell Company, Inc., owned the stock of the Grinnell Company of the Pacific. This alleged fact is denied by Reddy, secretary of the Grinnell Company of the Pacific (p. 413), who states that the Grinnell Company, Inc., does not own any stock in the Grinnell Company of the Pacific, and has no connection therewith; that the Grinnell Company of the Pacific is not the agent of the Rhode Island corporation and does not deal in its goods. As the government had access to the books, files and records of both corporations with the opportunity easily to disprove these statements if incorrect, but did not do so, it must be that the assertions of Coefield, president of the Plumbers' Union, a stranger to both corporations, were incorrect. The most that can be said is that the Government made a mistake in

identity. There can be no question but that on the record the decree must be reversed as to Grinnell Company, Inc.

c. As to seven other defendants, there is no evidence whatever, except the mere showing that they held memberships in the Industrial Association of San Francisco or the Builders Exchange, or both. The evidence in this respect is as follows:

Santa Cruz Portland Cement Company was shown to be a member of the Builders Exchange (p. 210) and a member of the Industrial Association (p. 275).

J. S. Guerin & Company was shown to be a member of the Builders Exchange (p. 210).

Nephi Plaster & Manufacturing Company was shown to be a member of the Builders Exchange (p. 276).

McNear Brick Company was shown to be a member of the Builders Exchange (p. 210), and a member of the Industrial Association (p. 275).

The Otis Elevator Company was shown to be a member of the Industrial Association (p. 275).

W. P. Fuller & Co. was shown to be a member of the Industrial Association (p. 275) and a member of the Builders Exchange (p. 276).

Bass-Hueter Company was shown to be a member of the Builders Exchange (p. 276).

It is difficult to understand the basis upon which the complainant justifies its demand for a decree as against these defendants. The only conceivable argument would be that membership in either one or both of the

principal defendants *ipso facto* and in and of itself without more, made each and every one of the defendants guilty of the alleged conspiracy participated in by the associations of which they were respectively members.

There is no legal justification for any such proposition, and the attitude of complainant is particularly significant when it is realized that there are several thousand members of the Industrial Association and several hundred members of the Builders Exchange, all of whom, upon complainant's theory would be equally guilty in their individual capacities of participating in the alleged conspiracy.

An association is a creature of contract. The powers of an association, the functions of its officers, and the liabilities of its members are all determined by the law of contract. When a person becomes a member of an association he contracts as to what the association and its officers may do in the way of binding him by their actions. It is said that in associations formed for profit, the relation between the members is in the nature of a partnership (*Love v. Blair*, 72 Ind. 281, 5 *Corpus Juris*, 1334), and that in the case of an association formed for non-business purposes the relation between the association and its members is that of agent and principal, the association and its officers occupying the position of agent and the members that of principal. (*Ostrom v. Greene*, 161 N. Y. 353, 55 N. E. 919, 5 *Corpus Juris*, 1363).

In the case at bar the principal defendants, of which these particular defendants were members, were asso-

associations formed for non-profit purposes, and were not engaged in business activities (pp. 222, 238). The relationship therefore between such associations and their officers and that of the members was that of agent and principal. The authority of the agent was set forth in the constitution and by-laws of the associations. This is the limit of the authority given by the members, and it is only under the exercise of that authority that they can be held responsible. The constitutions and by-laws of the associations reveal that they were formed for lawful purposes, and no authority whatever was delegated by the members to the associations or their officers to commit torts, much less crimes (pp. 222, 238).

In *Boutwell v. Marr*, 71 Vt. 1, 43 L. R. A. 803, the court said in disposing of a contention that membership in an association made the members responsible for the acts of the association and its officers:

"The fact that the members of the association voluntarily assumed its obligation in the first instance, so far as it is a fact, is not controlling. The law cannot be compelled by any initial agreement of an associate member to treat him as having no choice but that of the majority nor as a willing participant in whatever action may be taken."

On what conceivable basis, therefore, can these particular defendants be held to have participated in the alleged conspiracy? The association itself may, it is conceded, be held responsible for the acts of its officers, even though such acts are beyond the scope of their authority. But membership in such association does not *ipso facto* make the members participants in the

alleged conspiracy. If evidence had been introduced to show that these particular defendants had knowledge of the acts of the associations and their officers, and stood by without making a protest, or had acquiesced in the acts, or received the benefits thereof, the court might have had some basis for holding these defendants responsible for the acts of the associations and their officers. But there is no such evidence. No attempt was made to connect these defendants with any of the so-called acts or devices alleged to have been employed by the principal defendants, or to show that they had knowledge thereof or acquiesced therein. The case against them rests solely upon the fact that they are members of the defendant associations. Under such a state of facts the decree against these defendants should be reversed.

What has been said with respect to the responsibility of members of an association for the acts of the association and its officers for torts applies *a fortiori* to liability for acts which constitute crimes.

A violation of Section 1 of the Anti-Trust Act, under which this suit is brought, is a penal offense. In *Atlanta v. Chattanooga Foundry & Pipe Works*, 127 Fed. 23 (C. C. A.) the court said:

“We find ourselves in agreement with the court below in holding that an action under the seventh section of the Act of July 2, 1890, Chap. 647 (26 Stat. at L. 210), is not a penal action. The first three sections of the Act are undoubtedly penal. They forbid certain contracts and combinations, and provide that persons doing any of the forbidden things shall be guilty of a misdemeanor,

and subject to punishment by both fine and imprisonment."

The decree in the present case makes liable members of an association under a penal statute, for the act of that association, merely because they are members of the association, and this in spite of the fact that it is shown that the association was formed for lawful purposes and that the association and its officers were not authorized to do unlawful acts. Reduced to its simplest terms it is an attempt to hold a principal for the crime of his agent, performed without the scope of his authority. The mere statement of the proposition is sufficient to condemn it.

In *Lawlor v. Loewe*, 235 U. S. 522, where it was sought to hold certain individuals as members of the hatters union for damages under Section 7 (a non-penal section), evidence was introduced to show that such defendants were not only members of the union, but that they had received full and complete notice of its activities and had acquiesced in the various acts of its officers in furthering the object of the striking union. The lower court had directed the jury that if the members in question paid their dues *and continued to delegate authority to their officers unlawfully to interfere with the plaintiffs' interstate commerce* in such circumstances that they knew or ought to have known, and such officers were warranted in the belief that they were acting in the matters within their delegated authority, such members and no others were jointly liable. In passing on the question this court said:

"It seems to us that this instruction sufficiently guarded the defendants' rights and that *the defendants got all they were entitled to ask for in not being held chargeable with knowledge as matter of law.* It taxes credulity to ask anyone to believe that members of labor unions at that time did not know that the primary and secondary boycott and the use of the 'We don't patronize' and 'Unfair' lists were means expected to be employed in the effort to unionize shops * * *". (Italics ours.)

And referring to the acts of the union officials the court continued:

"Their conduct in this and former cases was made public especially among the members, in every possible way. If the words of the documents on their face and without explanation do not authorize what was done, the evidence of what was done publicly and habitually, showed their meaning and made for future interpretation, the jury cannot but find that by the usage of the unions the acts complained of were authorized, and authorized with regard to their interference with commerce among the states.

"We think it unnecessary to repeat the evidence of the publicity of this particular struggle in the common newspapers and union prints, evidence that made it almost inconceivable that the defendants, all living in the neighborhood of the plaintiff, did not know what was done in the specific case. If they did not know that they were bound to know the constitution of their societies and at least well might be found to have known how the words of those constitutions had been construed in act."

The liability of a large association formed for the purpose of attaining economic ends for the acts of constituent members bears a close relation to the question as to the liability of defendants whose active participa-

tion in the acts complained of was not shown. The question received much attention in the *Coronado* case (*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344) where this court held that the International Union and the United Mine Workers of America were not responsible for lawless acts of a district union. Though the very purpose of the larger organization was in part to take over local strikes and to pay their cost if deemed wise, and though the evidence showed that the national president had complete knowledge of, expressed sympathy for, and to some extent approved of the lawless acts of members of the local union, the question of liability of the national organizations depended upon principles of actual agency, and was settled conclusively by the constitution of the Associations concerned.

After referring to the action of White, the national president, in thanking Stewart, the president of the local union, who was then in the penitentiary for his criminal act of conspiracy to defeat an injunction, and in subsequently appointing him to a position on a District Committee, the court said:

"It would be going very far to consider such acts of the president alone a ratification by the International Board, creating liability for a past tort. The president had not authority to order or ratify a local strike. Only the Board could do this. White's report in an executive meeting of the Board of the riot of April 6 shows sympathy with its purpose and a lack of respect for law, but does not imply or prove on his part any prior initiation, or indicate a desire to ratify the transaction as his work. The Board took no action on his report."

Again, it said:

"The argument of counsel for the plaintiffs is that, because the national body had authority to discipline district organizations, to make local strikes its own, and to pay their cost, if it deemed it wise, the duty was thrust on it, when it knew a local strike was on, to superintend it and prevent its being lawless at its peril. We do not conceive that such responsibility is imposed on the national body * * *. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency, which the constitutions of the two bodies settle conclusively."

See also, as to the necessity of direct proof to connect defendants with a combination or conspiracy under the Anti-Trust Act, *United Mine Workers v. Pennsylvania Mining Co.*, 300 Fed. 965, 968-969; *Finley v. United Mine Workers of America*, 300 Fed. 972, 974-977.

The *Coronado* case and *Lawlor v. Loewe* were brought under section 7 of the act, a provision admittedly not penal in its nature. The court held in these cases that mere membership in an Association which violates the act does not charge the members with knowledge thereof as a matter of law, but that evidence of agency, or authority or participation is required before the defendants can be held. In the case at bar the sole evidence is that these defendants among many others, were members of the principal defendants. There is no evidence tending to show that they had knowledge of the acts which are alleged to constitute the conspiracy, or that they participated therein.

We submit that the decree should be reversed as to these defendants.

IV.

THE EVIDENCE.

The evidence in this case was introduced under stipulation in the form principally of voluminous affidavits. This practice resulted in the introduction of much irrelevant and incompetent matter, but has the merit that it places this court in as favorable position to judge of the credibility of the witnesses as was the trial court. The contents of the affidavits could only be contradicted by counter-affidavits, most of which are widely separated in the transcript from the affidavits which they controvert, a situation which requires that the various parts of the transcript be collated for the purpose of understanding the facts.

Considerable space is also taken up by evidence of the alleged refusal of certain plumbing supply houses to sell plumbing materials. As already pointed out these refusals ceased more than six months before the bill in this suit was filed. The evidence respecting them may therefore be disregarded. The explanation of the introduction of this particular evidence, is that it was part of the evidence in the action commenced in the state court under the state Anti-Trust Act, in which these defendants were acquitted, which action was commenced five months prior to the filing of the bill in this suit. When the transcript of the evidence in the state

court action was introduced in this suit, this evidence was included. It should however be disregarded.

The salient facts in this case are not contradicted. Those having to do with labor and industrial conditions in San Francisco before, during and after the industrial controversy, and the existence and operation of the so-called Permit System, are not the subject of serious dispute.

A contention is made by the Government, however, that there were certain direct interferences with interstate commerce. While the evidence concerning these alleged interferences occupies a very substantial portion of the transcript, as is shown by the opinion in the court below, the alleged acts are of comparative unimportance. As a matter of fact such alleged interferences were no part of and had nothing to do with the Permit System of the defendants or with the industrial controversy, but the alleged refusals to sell in each instance were predicated upon other reasons of a trade nature.

Alleged Direct Interferences with Interstate Commerce.

The defendants deny that they are parties to any direct interference with interstate commerce. The evidence shows that they were most careful at all times to avoid anything which might furnish any basis for such interferences. They cannot without proof of authority be charged with responsibility for the isolated and sporadic acts of individuals, who in an excess of zeal, or for personal or trade reasons, may have done things which were entirely beyond the plan and agree-

ment of the defendants. We will, however, devote ourselves briefly to a discussion of the evidence with respect to the so-called interferences. The evidence shows,

1. That the alleged refusals in each instance were not the result of agreement or combination on the part of the defendants, had nothing whatever to do with the industrial controversy, and were wholly individual acts of certain of the defendants, based on trade considerations personal to them.

2. That they are but ten in number and are spread over more than one year in space of time.

3. That the materials involved were of little value.

4. That certain of the alleged interferences are shown by the evidence, never to have taken place.

The specific alleged interferences are as follows:

1. Jumbo Plaster Co. (Gray, San Francisco) July 1, 1922.

Jumbo Plaster Co. (Gray-Thorning) July, 1922.

2. Sandusky Cement (Gray-Thorning) October and November, 1922.

3. Keene Cement (Best Bros.) April, 1923.

4. Standard Gypsum Company (Golden Gate Building Materials Co.) February, 1923.

5. Pacific Portland Cement Company (Golden Gate Building Materials Company) January, 1922-August, 1923.

6. Three Forks-McCormick S. S. Co. (Golden Gate Building Materials Company) April, 1922.

7. Pirie Lime Company (Golden Gate Building Materials Company) October, 1922.
 8. Sandusky Cement Company (Civic Center Supply Company) September, 1922.
 9. Tacoma and Roche Harbor Lime & Cement Co. (Civic Center Supply Company) February, 1923.
 10. Simmons Incident, May, 1922.
1. **Jumbo Plaster Company.**

The claim is made that the Jumbo Plaster Company, with a plant in Utah, refused to sell plaster to one Alexander Gray, a union official in San Francisco, said materials to be used by the Building Trades Council of San Jose, California (p. 298). The evidence shows that the shipments were delayed by reason of floods and damage to the plant in Utah; that when these conditions were alleviated, Mr. Payne of the Jumbo Company, visited San Francisco for the purpose of establishing a local agency. Upon ascertaining that Gray was not a recognized dealer, had falsely stated that he was purchasing plaster for export, had given a false name, and had no established facilities for handling his product, Payne reestablished the Cowell Company as the exclusive agent for Jumbo plaster. As a result the Jumbo Company refused to accept further orders from other persons, including Alexander Gray (pp. 269-272).

Correspondence between the Jumbo Company and Gray-Thorning was introduced to rebut the statement of the President of the Jumbo Company that all subsequent orders were referred to the Cowell Company

(p. 272). The correspondence itself, however, reveals that the Jumbo Company accepted an order from the Gray-Thorning Company of Redwood City, California, at which place its local agent, the Cowell Company, had no facilities or sales rooms.

2. Sandusky Cement Company.

This consists of two separate incidents. The first in order of time occurred in October and November, 1922, and consists of inquiries concerning a car of Medusa Cement shipped by the Sandusky Company from Ohio to strikers in San Jose, California (pp. 293, 4, 5).

The inquiry was made by Mr. George, Manager of the Henry Cowell Lime & Cement Company which at the time and for a long time previously had been engaged in litigation with the labor unions in San Jose and the San Jose Building Trades Council. The Cowell Company had the exclusive San Jose agency for Medusa Cement manufactured by the Sandusky Company, and made the inquiry for the purpose of determining whether others were buying Medusa cement for the San Jose territory. The result of the inquiry showed that this particular car was ordered by Gray-Thorning of Redwood City, California, ostensibly for use in the Redwood City District, but that it had been diverted by said company for use by the San Jose Building Trades Council in the City of San Jose, which was Cowell Company territory. The car was delivered, but thereafter the Cowell Company was active in attempting to prevent further shipments into its exclusive territory by companies having agencies for other territories (p. 448-52).

The Sandusky Company later refused to sell a small quantity of cement to Gray-Thorning. The evidence regarding this is quite voluminous, although the subject matter was a small quantity of material and of relatively small value (pp. 366, 372, 349, 355, 371, 365, 350, 370, 367). The evidence on this incident will reveal that the refusal of the Sandusky Company to sell was based on two considerations—first, the objection of the Cowell Company, its principal agent in California, that Gray-Thorning was purchasing cement and diverting it to territory in which the Cowell Company had an exclusive agency (pp. 448-52), and, secondly, the desire of the Sandusky Company, independently arrived at, of its own volition, to refuse to sell to persons who were aiding the unions in the local controversy (pp. 305, 6).

The evidence clearly shows that there was no coercion, solicitation or pressure brought by any of these defendants upon the Sandusky Company (which by the way is not one of the defendants) to induce it to refuse to sell to dealers cooperating with the unions. This is made clear not only by the affidavits of Rogers (p. 442) and George (p. 448), but also by the affidavit of Federal Agent Kage (p. 305).

The evidence also clearly shows that the Sandusky Company during the entire controversy, shipped its specialty cement into California without requiring permits (pp. 455, 6). When it is borne in mind that the cement sold by the Sandusky Company is used in very small quantities for finishing purposes only, and the fact that it shipped into California in 1921 twenty-three carloads; in 1922 fifty-seven carloads, and in 1923 up to

October 1, forty-two carloads (pp. 443, 4), all without permits, it must be concluded that the alleged direct interferences in the Sandusky case did not exist, and that the acts shown had nothing to do with the conspiracy charged against the defendants.

3. Keene Cement (Best Bros.).

The complainant attempted to show that Best Bros., operating a plant in Kansas, refused to sell Keene Cement produced by it, to the Golden Gate Building Materials Company of San Francisco, because the Golden Gate Company did not have a permit of the San Francisco Builders Exchange. The facts show directly to the contrary. The evidence on this consists entirely of correspondence passing between Best Bros. and their local agent in San Francisco, and also with Mr. George of the Henry Cowell Lime & Cement Company, which handled a competing brand of cement. These letters show that the Golden Gate Company was composed of five plastering firms which were themselves members of the Builders Exchange. They show further that these five plastering firms formed the Golden Gate Company for the sole purpose of securing dealers' prices, when as plastering contractors they were not entitled to receive such dealers' prices; that as a result the various dealers protested to the cement companies; that these protests were communicated to Best Bros. in Kansas, and that as a result thereof Best Bros., desiring to observe the rules of the trade wrote that they would refuse further orders from the Golden Gate Company although they continued to sell directly to the plastering firms who owned all of the

stock of the Golden Gate Company (pp. 387, 388, 328, 337, 330, 390, 392, 338, 331, 340, 335, 342).

As a matter of fact there is no direct evidence that any orders were in fact refused or any shipments were not made. The evidence clearly shows that so far as the defendant associations are concerned the officials thereof openly stated that they had no objection whatever to sales being made to the Golden Gate Company and positively announced to the officials of the different cement companies that they would not tolerate any discrimination against the Golden Gate Company, and that such companies would not be permitted to use the American Plan as an excuse for gaining trade advantages (pp. 338, 335, 342). The opposition resulting in the statement by Best Bros. that the orders of the Golden Gate Company would be refused, was due entirely to the action of dealers in California who resented the fact that plastering contractors, by combining, could obtain dealers' prices (pp. 456, 445-7, 467).

The evidence also shows that the competitive dealers in California endeavored to turn this situation to their own advantage in discrediting the use of Keene Cement in that State (p. 338).

4. Standard Gypsum Company.

The contention of the Government here is that the Standard Gypsum Company which had its plant in Nevada and its main office in San Francisco, refused to fulfill its contract for materials with the Golden Gate Building Materials Company by reason of the opposition of certain dealers in the San Joaquin Valley,

California, who stated that they would refuse to deal with the Standard Gypsum Company if it continued to sell to the Golden Gate Company (pp. 326, 7). This objection on the part of the San Joaquin dealers was the same as that dealt with in the Best Bros. Keene Cement matter, and was founded upon the objection of dealers to the sale of materials direct to a concern which was merely a combination of consumers and not legitimate dealers (p. 327).

In this connection it should be remembered that at no time did the permit system extend beyond San Francisco and its immediate vicinity and that at no time did it apply to the San Joaquin Valley. The affidavit of Government witnesses in relation to this incident (Barrymore, p. 327) reveals that no permits were ever required for materials in the San Joaquin Valley or outside the San Francisco District. Therefore, it is apparent that the objections to selling to the Golden Gate Company were based on matters of trade policy by men unconnected with the American Plan or the Permit System.

5. Pacific Portland Cement Company.

The contention of the Government in this connection is that the Pacific Portland Cement Company refused to sell cement to the Golden Gate Building Materials Company. The Pacific Portland Cement Company is a California corporation manufacturing all its cement in California, but having a plaster works in Nevada. This plaster is taken to San Francisco and there warehoused, from which point it makes all of its Cali-

fornia deliveries (pp. 467, 70). The affidavit of the Government witness (Knowles, p. 311) is to the effect that the Pacific Portland Company refused to fill orders of the Golden Gate Company. The statements in this affidavit are flatly contradicted by those of Towle, secretary of the Pacific Portland Company (p. 470), who testifies that no orders of the Golden Gate Company were ever refused, and in support thereof sets forth the actual shipments made to the Golden Gate Company showing that shipments to the Golden Gate Company of large quantities of cement and plaster had been made by the Pacific Portland Company during the very period in which the Government witness claims that shipments were refused.

6. Three Forks-Portland Cement Company, McCormick S. S. Co.

The contention of the Government here is that the Golden Gate Building Materials Company of San Francisco contracted to buy certain materials from the Three Forks-Portland Cement Company, a Montana concern, to be forwarded by rail to Portland, Oregon, and thence to San Francisco by ship; that the McCormick Steamship Company advised the Golden Gate Company that if it transported materials for the Golden Gate Company it would lose the business of other dealers in San Francisco, and therefore it would be necessary to raise the freight rates for such shipments (Knowles, p. 320). Aside from the improbability of any such statement being made by a common carrier which under the law is guilty of a criminal act if it discriminates against a shipper, the affidavits of the

President and the Traffic Manager of the Steamship Company (McCormick, p. 463 and Strittmatter, p. 463) deny categorically and positively that any such statements were ever made, and on the contrary assert that the Steamship Company during the period in question did carry large quantities of building materials for the Golden Gate Company at the regular rates.

7. Pirie Lime Syndicate.

The contention of the Government in this matter is that the San Francisco agent of the Pirie Lime Syndicate of British Columbia accepted an order for 150 barrels of lime from the Golden Gate Building Materials Company, and thereafter requested the cancellation of said order. The testimony respecting this incident is by the affidavit of A. Knowles (p. 321) who made the affidavits in most of the instances already referred to. The statements of Knowles are denied by the affidavits of Hughes, San Francisco Agent for the Pirie Lime Syndicate (pp. 322-393), Levy (p. 459), Fagan (p. 446), and also by the correspondence. The testimony shows conclusively that the request for the cancellation originated with the Golden Gate Company itself, which, prior to the date of shipment, had embraced the American Plan.

8. Sandusky Cement Company (Civic Center Supply Company).

The contention of the Government in this connection is that the Civic Center Supply Company of San Francisco which had been actively engaged in supplying building materials to the unions, was refused cement by the Sandusky Cement Company of Ohio (pp. 295, 6). The

answer to this contention is the same answer that applies to the incident mentioned as No. 2 above, that is, that the Sandusky Company, of its own volition, and without any argument, persuasion or pressure on the part of any of these defendants, came to the conclusion that it did not desire to sell to the Civic Center Supply Company. As stated above, shipments of materials were constantly being made by the Sandusky Company from Ohio to San Francisco and vicinity for building purposes without permits, and there is absolutely no showing that the refusal claimed in this instance had any connection whatever with any acts on the part of the defendants, or was the result of any agreement between them (pp. 455, 6; 443, 4).

9. Tacoma and Roche Harbor Lime & Cement Co.

The contention of the Government in this connection is that the Civic Center Supply Company of San Francisco entered into an agreement with the Tacoma and Roche Harbor Lime Company, operating a plant in the State of Washington, for the shipment to it of 250 barrels of lime and that such shipment was not made by reason of the activities of the defendants (Chamberlin, pp. 296-8).

The affidavit of Reveal (pp. 313, 14; 466, 7) the agent in San Francisco of the Lime Company is that no such refusal was made; that the said 250 barrels of lime alleged to have been purchased by the Civic Center Company were part of a general consignment of lime sent to San Francisco from Washington, to supply the demands of the company in that city; that in accordance with its

contract with Atlas Mortar Company of that city to supply to it a minimum of 3000 barrels per month, said 250 barrels were delivered to the Atlas Mortar Company under said agreement; that at no time were the orders of the Civic Center Company refused, it being supplied by Tacoma and Roche Harbor Lime Company at all times during the period under consideration without the necessity or requirement of any permit. The affidavit of George (p. 455) shows affirmatively that at no time was any permit ever required for the sale or delivery of lime of the Tacoma and Roche Harbor Lime Company.

10. Simmons Incident.

The Government introduced the affidavit of Bennett (p. 47) attorney for the Building Trades Council in San Jose, and the affidavit of Cambiano (p. 50) Secretary of said Building Trades Council, to the effect that one Simmons, who is one of the defendants in this action, refused to sell materials to them, and in fact cancelled a sale of two cars of cement previously made; that Simmons stated the reason for this cancellation and action was that threats were made by some of the defendants that he would be injured financially if he continued to supply materials to the labor unions in San Jose. The Government testimony is contradicted by the affidavits of Mr. Kuhl (pp. 401-2), attorney for the defendants, and W. H. George (pp. 396-8), which show that the transaction involved the private warfare between the Cowell Company and the San Jose unions,

having nothing to do with the American Plan or the Permit System.

It is attempted in the affidavits first mentioned to show that certain proposed shipments of Belgium cement were prevented. It is worthy of note in this connection that the importation of Belgium cement and other foreign cements increased during the period of the controversy (p. 397).

Summary of Evidence on Alleged Direct Interferences.

We point out in connection with these so-called direct interferences with interstate commerce, the following facts:

1. That they consist in but ten instances in all, during a period of more than one year.
2. That the total amount of materials involved is small, probably not to exceed \$30,000, during a period when more than \$100,000,000 of building work was being done in San Francisco.
3. That but four parties in all are involved, the Golden Gate Building Materials Company, a concern formed by five plastering contractors for the purpose of securing dealers' prices; the Civic Center Supply Company; Gray-Thorning Company, which was invading the territory exclusively allotted to other dealers, and Alexander Gray, a union official masquerading under an assumed name, and giving false information as to the destination of the materials he sought to purchase.
4. That in no case have these alleged refusals been connected with the principal defendants, or shown to

have been pursuant to the plan or agreement between the defendants to establish the American Plan in San Francisco. They are in each and every instance due either to trade causes separate from the industrial controversy or represent the independent judgment of a stranger as to the justice of the cause of those who favored the American Plan.

These facts are particularly noteworthy when it is considered that for months the Government with a corps of investigators combed the records of these defendants, interviewing every person and investigating every firm which it was thought might possibly be connected with or interested in the industrial situation in San Francisco. And what does the record show? What have these efforts produced? A handful of minor transactions, strikingly insignificant, as to all of which evidence appears which removes them from and sets them apart from the local efforts to establish open industrial conditions in San Francisco.

The record shows that the plan of action of the defendants, namely, the Permit System, was one which sedulously avoided touching upon, interfering with, or affecting in any way, however remote, materials which were or could be the subject of interstate commerce.

The materials which were placed upon the permit list were chosen because they were produced in the State of California and were to be consumed in the City of San Francisco. Materials produced in states other than California were carefully excluded from the list so as to prevent any connection whatever with interstate commerce, however justifiable the ends.

None of the instances relied upon by the Government, namely, the so-called direct interferences, were shown to be, and from the very nature of the Permit System could not have been, in pursuance of a general plan of action or a general conspiracy to which all the defendants were parties. All refusals to sell were induced by causes other than general agreement of the defendants, with which these defendants had no connection or concern. If any of the facts relied upon were done with a view to attaining the end sought by the defendants, such acts were the independent efforts of individuals for which the defendants should not be held responsible.

Conclusion.

The case at bar is apparently the first case to come before this court involving an attempt to invoke the powers of the United States in connection with an industrial dispute wholly local in its area, for the purpose of aiding one of the parties to the controversy. In the *Coronado* case and in the *Herkert & Meisel* case, private parties did seek unsuccessfully to apply the Anti-Trust Act to local controversies arising out of disputes between employer and employee. But never before, so far as we have been able to discover, has a bill in equity brought under the authority of the Attorney General for the purpose of interfering in local industrial disputes carried on by peaceful means come before this court. The decree in the lower court opens a limitless field for the intervention of the national authority. If the indirect restraint of commerce, resulting from a combination for the purpose of changing conditions in the building industry in San Francisco, is a combination in restraint of trade, because it requires conformity with certain economic practices deemed beneficial to the community or to employers of labor, it becomes impossible to draw any line of demarcation between permissible and non-permissible associations. And since a combination is none the less obnoxious to the Anti-Trust Act, though it is aimed at the improvement of conditions, if it actually restrains interstate commerce, the result will be to make unlawful weapons now used in the industrial conflict by both parties. A local strike of workmen or clerks engaged in working on articles of interstate commerce or in selling them,

though the means used by the strikers do not involve acts or combinations extending into other states, as they did in the *Duplex* case and in *Loewe v. Lawlor*, may be withdrawn from the sphere of the lawful and placed in that of the illegal by the application of the Anti-Trust Act. Similarly, local boycotts on shops selling local and foreign products may be drawn out of the jurisdiction of the state though the boycott is addressed to the individual selling the goods because he is deemed unjust to labor, and not against the products as such. So lockouts by employers who sell goods, imported from other states along with those of home production, may be drawn into the same current by the same means. Indeed, the decree in the present case goes perhaps further than the hypothetical cases. It forbids San Francisco producers from refusing to sell sand or gravel produced in California to other San Franciscans, because the refusal may remove these San Franciscans as probable purchasers of goods from other states by decreasing their incentives to buy such goods. As said by counsel in the *Coronado* case, such extensions of Federal power (and they are no more extreme than those involved in the present decree) "would destroy the Constitution itself" (259 U. S. 344, 358). Economic pressure exercised at any point, of necessity, affects to some degree the movement of goods in interstate commerce. But to interpret the Anti-Trust Act in the terms of a logic so absolute would fundamentally destroy its purpose. The interpretation of the act must be on lines of practical logic, not of abstract generalization, if it is to have useful results.

The decisions of this court have marked out general boundaries within which individuals may shape their policies without danger of interference. The defendants in the present case have moved within the lines designated. Their united actions fall outside the limitations of the Anti-Trust Act as interpreted by this court.

First, they did not directly interfere with interstate commerce in any respect. The Builders' Exchange under its Permit System expressly avoided such interference by confining that system to materials produced in the State of California, such as lime, cement, brick, etc.

Second, the defendants had no intent to restrain interstate commerce, to limit competition, to raise prices or to establish monopoly. Their purpose had nothing to do with trade or commerce. It was directed solely toward changing existing conditions in the building industry, which were believed to be detrimental to workers and employers as well as to the general public.

Third, the industrial conflict was confined to a local arena. There was no attempt to carry it beyond state lines by means of a boycott or otherwise. The acts involved in this bill were done in San Francisco. National or interstate transactions were not involved.

Fourth, the interference with interstate commerce, if any, was inconsiderable in amount.

Fifth, the acts of the defendants did not involve unreasonable or undue restraint of trade or commerce. The purpose and result of the acts were to overcome

the handicaps imposed upon the building industry by the abuses in connection with the closed shop in San Francisco, abuses which were preventing the necessary building operations for the comfort and health of the people of that city.

The court has always recognized that the ordinary practices of business life, though they may result in some interference with interstate commerce, are not obnoxious to the Anti-Trust Act. Persons may combine and contract with each other by means usual to business to obtain objects recognized as valid and desirable, notwithstanding the acts. The attainment of proper ends by means of the employment of the usual machinery involved in industrial disputes is an aim not forbidden. As between the immediate parties, "those who are proximately and substantially concerned as parties to an actual dispute" (254 U. S. at p. 472), they may "push their struggle to the limits of the justification of self interest" (254 U. S. at p. 488). True, there may be limits to a conflict when "those engaged in it cannot continue their struggle without danger to the community" (254 U. S. at p. 488). But in the present case no danger was threatened to the community. There was no reason why the struggle should not be permitted to proceed with lawful weapons in a local arena, between the immediate parties. Even if to some extent commerce between the states had been temporarily impeded, which was not the case, the restraint cannot be said to be undue where it is purely incidental to the industrial conflict.

It is respectfully submitted that the decree of the District Court should be reversed.

Dated, San Francisco,
January 20, 1925.

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CALENDAR.

- April 29, 1921. Repudiation by Labor Unions of Award of Board of Arbitrators.
- May, 1921. General Building Strike.
- June 12, 1921. American Plan Announced and Permit System Established by Builders Exchange.
- September, 1921. Termination of General Strike.
- March, 1922. Renewal of Strike by Plumbers, Plasterers and Bricklayers. Permit System Re-established by Builders Exchange.
- May-Nov., 1922. So-called Plumbers' Refusals. Circulation of Lists and Refusals to Sell Terminated November 8, 1922.
- Dec. 12, 1922. Defendants Charged with Violation of State Anti-Trust Act.
- May 9, 1923. Defendants Acquitted of charge of Violation of State Anti-Trust Act.
- May 26, 1923. Bill of Complaint in this Suit Filed.
- Dec. 19, 1923. Decree Entered in this Suit.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1924.

No. 365.

INDUSTRIAL ASSOCIATION OF SAN
FRANCISCO, CALIFORNIA INDUSTRIAL
COUNCIL INDUSTRIAL ASSOCIATION
OF SANTA CLARA COUNTY, ET AL., AP-
PELLANTS,

VS.

THE UNITED STATES OF AMERICA,
APPELLEE.

REPLY BRIEF FOR APPELLANTS.

The purpose of this reply brief is to direct the attention of the Court to the question which these defendants believe presents the important issue in this case:

Did these defendants violate the Anti-Trust Act when they refused in San Francisco to sell State building materials to contractors and owners who did not operate on the American Plan?

[Italics in quotations are ours.]

[Transcript references are indicated thus (p. —).]

This question is not dealt with at length in the brief for the Government, although it is there urged that the permit system on State goods did restrain interstate commerce in violation of the Anti-Trust Act. The defendants contend that the permit system, applying as it did to State materials only, does not violate the Anti-Trust Act.

The Government presents its case as follows (brief for appellee, p. 125) :

“The case now presented is based upon the fundamental proposition that employers may not be compelled to surrender their constitutional right to make any lawful contract with their employees with respect to membership or nonmembership in a union by a concerted effort to control building materials coming into a State from outside sources.”

These defendants deny that they attempted to or did control building materials coming into California from outside sources, and they claim that the evidence supports their position.

The Government realizes that to make out its case it must show a restraint of *interstate* commerce. We submit that no such restraint is shown by the evidence. The evidence shows:

1. That the sole object and intent of the defendants was to establish the American Plan in the building industry in San Francisco and to terminate the discrimination against competent workers because they

were not members of a San Francisco labor union.

2. That to secure the adoption of the American Plan the defendants established the permit system, under which they refused to sell certain specified materials all produced in California, save plaster produced in adjoining States and warehoused in San Francisco, to contractors who enforced the closed shop in San Francisco. That at no time did the permit system apply to materials originating outside the State, save as to said plaster.

3. That the acts of the defendants were confined to California, and no lists were circulated outside the State.

4. That the record does not show a single instance of anyone who failed to buy or was prevented from buying materials from without the State, because he could not buy State materials subject to the permit system.

We submit that the record fails to support the contention of the Government that these defendants restrained interstate commerce.

The defendants did not anticipate that a large part of the brief of the Government would be devoted to a recitation of evidence of alleged direct interferences with interstate commerce, in which the evidence claimed to show such interferences is quoted, the evidence in contravention or explanation being, in most cases, omitted.

In an attempt to anticipate the argument on the so-called direct interferences, the appellants de-

voted pages 99 to 113 of their brief to a discussion of the evidence on this question. However, the recitation of a portion of the evidence at length in the brief of the Government makes it advisable to refer once again to the evidence.

**1. THE SO-CALLED PLUMBERS' REFUSALS CEASED
IN NOVEMBER, 1922, SIX MONTHS BEFORE
THE BILL IN THIS CASE WAS FILED.**

Much space is devoted in the brief for the Government to the recitation of evidence on the so-called plumbers' refusals, and a large part of the argument is based upon these refusals and the circulation among the plumbing-supply houses in San Francisco of lists of plumbers who were operating on the closed-shop plan. It is most important to remember that these so-called plumbers' refusals had no connection with the permit system, which never covered plumbing supplies, and that these refusals and the circulation of the lists absolutely ceased in November, 1922, six months before the bill in this case was filed. They are, therefore, of no importance or significance in this case and should be disregarded. (See Appellant's Brief, page 22, and this brief, page 37.)

**2. NO LISTS CIRCULATED OUTSIDE STATE BY DE-
FENDANTS.**

In the brief for the Government an argument is made that these defendants, by the circulation of

information among people in other States, restrained interstate commerce. On page 106 of its brief, the Government says:

“The very circulation of information among the manufacturers of plaster, lime, cement and plumbing materials, located in States other than California, of the names of contractors and builders or dealers who were not operating on the American Plan or who refused to pledge themselves to operate upon that plan, was intended to have the natural effect of causing such manufacturers to withhold sales and shipments from the concerns so listed.”

No information or lists of the names of persons not operating on the American Plan were ever sent or circulated outside the State of California by these defendants. The permit system did not include the sending out of lists of persons not operating on the American Plan, but operated in a different way—that is, through the issue of permits for materials.

During the period of the so-called plumbers' refusals, lists of the names of plumbing contractors who operated on the closed-shop basis were sent by the Industrial Association to San Francisco plumbing-supply houses. The names and addresses of the plumbing-supply houses to which such lists were sent are given on page 154 of the transcript. They are all located in San Francisco. The sending out of these lists ceased on Novem-

ber 8, 1922, six months before the bill in this case was filed (p. 206).

We submit that there is no evidence in the record that these defendants sought to or did interfere with interstate trade by circulating in other States lists of names of closed-shop contractors.

3. THE PERMIT SYSTEM; THE IMPORTANT QUESTION.

(a) The Permit System was Local in Its Application and Covered State Materials Only.

The permit system covered only State materials; materials produced in California and destined for use in the strike area. The only exception to this was some plaster, produced in adjoining States, brought to San Francisco, placed in stock, and sold for local consumption. All of the remaining materials subject to the permit system—cement, lime, ready-mixed mortar, clay products, rock, sand and gravel—were produced in California (Appellant's Brief, p. 17; also this brief, page 20). The permit system never applied to plumbing or other materials produced outside the State.

The defendants frankly admit:

1. That, to prevent the enforcement of the closed shop in the building industry in San Francisco, they attempted to secure the adoption of the American Plan.

2. That to secure the adoption of the American Plan they refused to sell certain State building materials, for use in San Francisco, to contractors who did not operate on the American Plan and who discriminated against qualified workmen simply because they did not belong to a San Francisco labor union.

The defendants claim that these acts do not constitute a restraint of interstate commerce in violation of the Anti-Trust Act.

The defendants had no desire or intent to interfere with traffic in building materials produced in other States. They did desire to establish the American Plan in San Francisco, and to accomplish this purpose they did refuse to sell sand and gravel and certain other State-produced materials to contractors who enforced the closed shop. They did not care whether a closed-shop contractor bought all the materials he desired from without the State, but he could not purchase the materials produced inside the State which were subject to the permit system. As the sand and gravel used in building in San Francisco are produced in San Francisco, it can readily be seen that the defendants, to accomplish their purpose, were under no necessity to interfere with materials coming from other States, and the evidence shows that they purposely avoided interfering in any way with such materials.

1. The defendants contend that the decree enjoining the permit system as to interstate goods is

in error because the permit system did not apply to interstate goods and the defendants did not interfere with the sale or transportation of interstate goods.

2. The defendants contend that the decree enjoining the permit system on State goods is in error because the permit system on State goods does not violate the Anti-Trust Act.

(b) The Court Below Enjoined the Permit System as Applied to State-Produced Materials.

The Court below enjoined the defendants from refusing to sell State-produced materials to any contractor who did not operate on the American Plan. This is made clear by a reading of the opinion and decree. (The opinion is reported in 293 Federal Reporter, 925.)

The learned judge, in his opinion (pp. 34-36), said:

“From all this mass of evidence, much of it contradictory, certain facts stand clearly forth. The first is that the defendants are acting in concert for the purpose of putting into effect and maintaining what is by them designated the ‘American Plan’ in the building industry in San Francisco and some of its neighboring counties. * * * With the merits or demerits of this plan, as with the recurring conflicts between employers and labor unions, this Court, acting within its jurisdiction, cannot lawfully be

concerned. * * * The purpose of the defendants therefore, in so far as it may be sought or attained without running counter to the Federal laws, cannot be interfered with by a Federal Court. * * * And this brings us to the second fact that the evidence clearly shows, and that is that the so-called permit system is the principal means by which the concerted action is rendered effective. Under this system, no one can purchase building materials covered thereby, without obtaining a permit from the permit bureau of the Builders Exchange, and no one can secure such a permit who will not pledge himself to run his job on the American Plan. * * * A third outstanding fact is that plumbers' materials, which are manufactured for the most part without the State, while not directly under the permit system, were just as effectively dealt with by the simple process of refusing a permit to purchase the materials that were under the system to any one who employed 'a bad plumber,' that is to say, one not operating on the American Plan. * * *

"However little intended to interfere with interstate commerce as claimed by the defendants, the result of their concerted action is such an interference therewith as under the Sherman Act cannot be tolerated. The Court, however, has no desire to go further in curbing their activities than the protection of such commerce requires.

"The defendants will not be dissolved nor their general activities interfered with, but a decree will be entered enjoining them from

requiring any permit for the purchase of materials or supplies produced without the State and coming here in interstate commerce, or from making as a condition for the issuance of a permit any regulation which will interfere with the free movement of plumbers' or other supplies produced without the State. They will also be enjoined from attempting to prevent or discourage any person without the State from shipping goods to any person whatever within the State."

Following this opinion, a decree was entered on December 19, 1923, which restrained the defendants from

"(a) Requiring any permit for the purchase, sale, or use of building materials produced without the State of California and coming into said State of California in interstate or foreign commerce;

(b) Making as a condition for the issuance of any permit for the purchase, sale or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without said State of California;

(c) Attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within said State of California * * *" (p. 38).

From this opinion and decree, it is clear that the learned judge below intended to prohibit the defendants from

1. Requiring permits for materials produced without the State, whether such goods were "in interstate commerce" at the time such permits were required, or had come to their final resting place in San Francisco.

2. Requiring, as a condition for the issuance of permits *for State-produced materials*, that the intended user should not employ a "bad" plumber or any other contractor who did not operate on the American Plan.

Here is presented the important question in this case.

This is not whether the defendants may or may not interfere with direct interstate shipments of building materials. Defendants contend that they did not interfere with such shipments, and that such alleged interference was no part of their plan.

The question is this: Shall these defendants be enjoined from refusing to sell State-produced building materials, intended for local use, to persons who do not operate on the American Plan?

(c) The Permit System Does Not Violate the Anti-Trust Act.

The Government contends in its brief that the refusal to sell State-produced materials to contractors who did not operate on the American Plan

violates the Anti-Trust Act. It bases its contention upon the argument that the refusal to sell State-produced materials restrains and interferes with interstate commerce in materials produced outside the State; that a refusal to sell San Francisco sand to a contractor because he employs a closed-shop plumber restrains interstate commerce in plumbing materials, although the contractor or plumber may buy all the plumbing materials he wishes without interference from defendants, for the permit system does not cover plumbing materials.

The argument of the Government is stated at page 91 of its brief as follows:

“The plan was in force not to issue permits for any building material until it was known that the plumbing contractor would support the American Plan. If the plumbing contractor was not satisfactory, none of the articles on the permit list could be purchased; and if none of the articles on the permit lists could be purchased, then necessarily the plumbing supplies could not be purchased.”

There is no evidence in the record that any person ever failed to buy plumbing materials or other goods produced outside the State because he could not buy State-produced materials which were under the permit system. It is left to inference and speculation as to what effect the refusal to sell State materials subject to the permit system had on the purchase of materials produced outside the State.

It probably had no effect whatever; but if it had any effect, we submit that it was so remote, indirect, secondary and incidental as not to make these defendants guilty of a violation of the Anti-Trust Act. The law on the subject is fully discussed in our opening brief.

4. CONSIDERATION OF THE BRIEF FOR THE GOVERNMENT, INCLUDING THE EVIDENCE ON ALLEGED DIRECT INTERFERENCES WITH INTERSTATE COMMERCE.

We will discuss briefly the topics discussed in the brief of the Government, taking up each topic in its order. For ease in reference, we will insert in quotations the actual headings used in the Government brief. We will refer particularly to the evidence on the alleged direct interferences with interstate commerce.

"The Proof."

"a. The combination and its purpose."

There is no question as to the combination or its purpose. The defendants have at all times admitted that they acted in concert to prevent the enforcement of the closed shop in the building industry and to rid that industry of the uneconomic and un-American restrictions imposed by the unions. To that end they attempted to secure the adoption of the American Plan.

It is stated in the Government brief, at page 10, that the American Plan required the employment of union and non-union men in equal numbers, and that the foreman must be non-union. We respectfully submit that this is not the fact. The American Plan provided that workmen should not be discriminated against because of membership or lack of membership in a labor union. There was no restriction as to the number of union men that might be employed on any job, so long as employment was not refused to a competent worker merely because he was not a member of a San Francisco labor union. To prove that there was no discrimination, it was required that there be at least one non-union man employed in each craft on each building. All the remainder might be union men. Proof of this will be found on pages 110, 136, 153, 183, 395, 445, and 453 of the transcript.

It is true that a rule was adopted by a committee of the Builders Exchange early in the general strike in 1921 requiring the employment of a non-union foreman and 50 per cent of non-union mechanics, but this was never approved and never was made effective (p. 395).

In March, 1922, ten months after the American Plan went into effect, 90 per cent of the plumbers were members of the Union (p. 437). W. H. George, President of the Builders Exchange, testifies (p. 452) that at all times more than 70 per cent of all men engaged in building construction were union men, and further testifies, "affiant

alleges that there has been employment open to every union man desirous of having employment for over two years last past, and that no union man during said period of time has been prevented from obtaining employment at very good wages with very good working conditions”.

We quote this evidence, not because the question of the proportion of union and non-union men employed under the American Plan is of importance in this case, but we do not wish to have the American Plan misunderstood and the fairness of the defendants questioned. The American Plan stands for this, and this only: a competent workman must not be discriminated against simply because he belongs or does not belong to a labor union, and there must be perfect freedom in the selection of employer and employee.

The Government in its brief, on page 13, “to show the extent of the conspiracy”, quotes two letters showing that the American Plan was being discussed in other cities and was being made effective there. Certainly it is no crime to adopt the American Plan, or to urge its adoption elsewhere, any more than it is a crime for labor organizations to urge the adoption of unionism. The defendants at no time urged the adoption of the permit system outside the State.

"B. Means adopted by Defendants to Restrain Trade."

"1. The Permit System."

The adoption of the permit system by the defendants is frankly admitted. It is discussed in appellants' brief at page 16, and later in this brief, where it is made clear that it applied only to the sale in San Francisco for use in the strike area, of certain specified building materials, to wit, cement, lime, plaster, ready-mixed mortar, clay products, rock, sand and gravel, all produced in California, with the exception of plaster produced elsewhere, but warehoused and sold in San Francisco.

"2. Pledges from Contractors."

It is admitted that before contractors could obtain permits for the materials subject to the permit system, that they signed pledges to operate on the American Plan and agreed not to discriminate against competent workmen because they did not belong to a San Francisco labor union.

"3. Warnings."

It is also admitted that letters were sent out to members of the Builders Exchange in San Francisco who did not operate on the American Plan, but who refused to employ competent workmen because they did not belong to a San Francisco labor union, and stating that further permits would be denied if this practice was continued.

"4. *Inspectors.*"

It is also admitted that inspectors were employed to find out whether contractors were complying in good faith with the American Plan and had ceased discriminating against competent workmen because they were not members of a San Francisco labor union.

"5. *Grievance Committee.*"

It is also admitted that members of the Builders Exchange who failed to comply with its rules were examined and if they were found to have violated the rules they were fined or disciplined. This was in accordance with the By-Laws of the Exchange which the members agreed to when they joined (p. 241). We do not conceive that this is any crime, any more than it is a crime for a labor union to expel a member who works for less than the union scale.

"6. *Lists.*"

Much space is devoted in the Government brief, page 34 *et seq.*, in an attempt to show that so called "black lists" were circulated. The evidence shows that the *Builders Exchange, which operated the permit system, never circulated any list which could be classed as a black list.* It is true that from May to November, 1922, the Industrial Association, at the request of certain of its members who were engaged in the plumbing supply business, prepared

lists of plumbers who were operating on the closed-shop basis and sent these lists to the plumbing-houses. The plumbing-houses to which these lists were sent are all located in San Francisco (p. 154). As later shown, the circulation of these lists ceased in November, 1922, more than six months before the bill in this case was filed (pp. 61, 85, 158, 190).

"7. Letters to Prospective Builders."

It is admitted that prospective builders in San Francisco were solicited to employ contractors who operated on the American Plan. This certainly cannot be fairly objected to.

"8. Compelling Breaches of Contracts."

It is claimed that these defendants induced the breach of a contract between one Pasqualetti and C. Peterson and Company, a plumbing contractor, because the latter was operating a closed shop and refusing to employ competent workers because they did not belong to a San Francisco labor union. The record does not contain evidence controverting this, probably because if true it would have no bearing on this case, inasmuch as the contract was for local plumbing work and had no connection with the sale or delivery of building materials. It is significant, however, that this is the only incident of this character attempted to be proved, although the statement is made in the Government's brief, page 50, "Somewhat similar experiences were detailed in the affidavit of W. K. Hughes." As will

be shown later, the Hughes incident does not show any breach or attempted breach of contract.

**(a) Alleged Interferences with Interstate Commerce
are Not Sustained by the Evidence.**

The Government devotes much of its brief to the quotation of evidence which it is claimed shows direct interferences with interstate shipments. All of this evidence is controverted by other evidence that no such interferences took place or that they were due to causes not connected with the industrial controversy. To quote at length this evidence would divert attention from the important question involved—whether a refusal to sell State-produced building materials for local use to contractors who do not operate on the American Plan is a violation of the Anti-Trust Act.

A large part of the evidence quoted by the Government has to do with the so-called plumbing refusals; that is, with the circulation among the plumbing-supply houses in San Francisco of lists of plumbers who were not operating on the American Plan, and certain refusals by such houses to sell to the plumbers whose names were on these lists. The argument of the Government is very largely based upon this evidence. We point out that the circulation of these lists and the refusals absolutely ceased November 8, 1922, six months before the bill in this case was filed (p. 206); that they had no connection with the permit system;

and that at no time did the permit system cover plumbing supplies (Appellant's brief, p. 22). The so-called Plumbers' Refusals are, therefore, of no importance in this case and should be disregarded.

We will not quote at length the evidence controverting that quoted by the Government. We point out, however, that every alleged instance of direct interference with interstate commerce claimed by the Government is controverted by other evidence of at least equal weight.

(b) Only State Materials were Covered by Permit System.

The permit system was at all times confined to cement, lime, plaster, ready-mixed mortar, brick, terra-cotta and clay products and sand, rock and gravel (pp. 112, 137, 445, 454). These materials, with the exception of some plaster, are produced in California, and were chosen for this reason (p. 454).

Some materials of this character do come from without the State, but, with the exception of plaster, the permit system did not apply to such materials. It did apply to plaster produced outside the State and brought to San Francisco and warehoused for sale. The permit system did not cover cement or the other specified materials, which came directly from without the State. The particular materials to be covered by the permit system were

chosen so as not to interfere with interstate commerce.

For that reason materials of which almost the entire amount used was produced in California were selected for the operation of the permit system. Some cement, brick, terra cotta, etc., did come from without the State, but it was negligible in amount and was never subject to the permit system or to any regulation. During the entire period, products on the permit list produced outside California came freely into San Francisco, without the necessity of permits (pp. 451-4-5, 331, 462-3-7, 466).

The Government states in its brief, on page 50:

“It was the purpose of the conspiracy to make it impossible for builders in San Francisco to obtain any building materials whether they came from within or without the State of California, without a permit from the Builders Exchange.”

We respectfully submit that this is not so. The only materials covered by the permit system were those mentioned above. W. H. George testifies (p. 454):

“This permit system applies to and involves only cement, lime, plaster, rock, sand, gravel and clay products and nothing else. In creating and maintaining this permit system over these commodities, said Builders Exchange have deliberately and advisedly excluded from any permit requirement, lumber, steel, hardware, paints, plumbing

supplies, lath, wallboards and glass. The materials which were put under the permit system and for which members of the Builders Exchange voluntarily resolved to require of each other permits, were selected so as to carefully avoid any interference with interstate commerce, as practically all the cement used in California is manufactured in California. Nearly all the lime used in California is manufactured and made into lime mortar in California. All the rock, sand and gravel and California (clay?) products used in and around San Francisco are manufactured in the State of California. And, practically all the plaster used in and around San Francisco is brought into San Francisco either by the manufacturing companies themselves or by local dealers, consigned to them and run into their sales-rooms and warehouses and commingled with other property of said manufacturers and dealers, and thereupon becomes intrastate property and ceases to be interstate property"

Much space is devoted in the Government's brief, at page 52 *et seq.*, in an attempt to show that the permit system was later extended to lath, wall-board and Keene cement. As stated in appellant's brief at page 17, the Industrial Relations Committee of the Builders Exchange, in June, 1922, more than ten months prior to the filing of the bill, recommended that these materials be placed under the permit system, but this never went into effect. No permits were ever in fact required for these

materials (pp. 445, 454, 457). L. E. Crawford, who was in charge of the issue of all permits testifies (p. 445): "That permits have only been required in the sale or delivery of the following articles and *none other*: cement, lime, plaster, rock, sand, gravel and clay products." W. H. George testifies to the same fact (pp. 454, 457). There is no evidence in the record that permits for any other materials were ever required.

Although more than 28,000 permits in all were issued there is no evidence in the record that any permit was ever issued for any material not mentioned above.

Not only was the permit system confined to the enumerated materials, but it covered only sales in San Francisco of materials to be used in the strike area—that is, in San Francisco and its immediate vicinity (pp. 81, 327). As to materials to be used outside the strike area, there were no requirements of any kind.

The following are instances of alleged interference with interstate shipments, dealt with in the Government's brief:

**(c) Evidence on Alleged Direct Interferences with
Interstate Commerce.**

"1.—Plaster."

The Government's brief, at page 56, states that five plastering contractors, known as "the big five," formed the Golden Gate Building Materials Company.

This is true. "The big five" plasterers formed this company for the purpose of securing dealers' prices (p. 444). It did not sell to any one other than "the big five." Dealers, as well as contractors, resented this attempt on the part of "the big five" to enjoy dealers' prices which, as contractors, they were not entitled to and this was the cause of their difficulties. "The big five" plasterers, as individuals, were members of the Builders Exchange and could obtain all the permits they desired (p. 338).

It is also stated in the Government's brief, page 56, that not more than 1 per cent of the plaster used in San Francisco is made in California. In answer to this, W. H. George (p. 454) testifies that permits were not required for goods coming directly from without the State, and that plaster is brought into San Francisco by the manufacturers or dealers themselves and kept in stock, from which local deliveries are made. Towle testifies to the same effect (p. 470).

At page 56 in the Government's brief, the testimony of A. Knowles is recited to the effect that he was refused plaster to complete the Golden Gate and Loewe Warfield theatres. This is denied by Towle, the Secretary of the Pacific Portland Cement Company, who testifies (p. 469), that he has read the affidavit of Knowles; that the same is not true; that the Pacific Portland Cement Company, of which Towle is assistant secretary, supplied the plaster required by Knowles for said theatres.

Towle then gives the dates and amounts of the deliveries. Towle further testifies that no order by Knowles for plaster was ever refused (p. 469); "said Pacific Portland Cement Company, Consolidated, furnished all the plaster ordered by said A. Knowles for the plastering of said Loewe and Golden Gate theatres, in the city of San Francisco, and no order of any kind of said A. Knowles for said theatres or either of them was refused."

"*Montana.*"—The Government in its brief, at p. 57, recites evidence which it claims shows that the Golden Gate Building Materials Company, in April 1922, was prevented from buying cement from the Three Forks Portland Cement Company at Hanover, Montana, by the threat of the McCormick Steamship Company officers to increase the transportation rates, because the Golden Gate Company was not a member of the Builders Exchange; and that the Three Forks Company refused to make further shipments. These statements are denied by the officers of the steamship company (pp. 463, 468), who further assert that, during the period in question, the steamship company continued to carry large shipments of building materials to the Golden Gate Company at regular rates. (See Appellant's Brief, pp. 107, 108.)

"*Nevada.*"—The Government, in its brief at page 58, sets forth evidence which it claims shows that the Pacific Portland Cement Company refused to sell plaster produced in Nevada, but warehoused in San Francisco, to certain persons, in-

cluding Civic Center Supply Company and Gray Thorning.

The Pacific Portland Cement Company is a California corporation with headquarters in San Francisco. While it manufactures all of its cement in California, it has a plaster plant in Nevada and ships plaster from that plant to its warehouses in San Francisco, from where it is sold and delivered for local consumption (pp. 469, 470).

The alleged refusals to sell to Civic Center Supply Company are denied by an officer of the cement company, who testifies (p. 472) that

“during 1922 and 1923 the said cement company did not refuse to sell its plaster to the said affiant or to said Civic Center Supply Company, but, on the contrary, during said years and at all times during said years, said cement company sold through its warehouse in San Francisco, Cal., sundry and various orders of plaster and other building materials, as required and ordered by said Gordon S. Chamberlain and the said Civic Center Supply Company.”

As to the alleged refusal to sell to Gray Thorning Company, the same officer of the cement company testifies (p. 471) that there is no record of any request to purchase being made by Gray Thorning; that during the period in question there was a great shortage of plaster and the cement company was unable to supply all demands; that by reason thereof, it gave preference to its regular

customers; that Gray Thorning was not a regular customer and if it had given an order it would have been necessary to reject it.

"Nevada."—The Government, at page 62 of its brief, recites evidence of an alleged cancellation by Standard Gypsum Company, with a plant in Nevada, of a contract to sell plaster to the Golden Gate Company, in California. It is claimed that this cancellation was caused by the protest of certain dealers in the San Joaquin Valley that the Golden Gate Company was not a member of the Builders Exchange. This is completely answered by the affidavit of the sales manager of the Gypsum Company, who testifies (p. 446):

"For a certain period of time, we refrained from selling the Golden Gate Building Material Company, for the reason that it appeared to us the institution was formed by certain plastering contractors, merely for the purpose of obtaining building supplies at dealers' prices. Under these conditions, it appeared to us that it would be unfair to other plastering contractors if we recognized the Golden Gate Building Material Company as a dealer. When the Golden Gate Building Material Company started to function as a dealer, selling all plastering contractors, as well as those contractors who had stock in that company, at regular retail prices, the Golden Gate Building Material Company was entitled, in our opinion, to receive goods at dealers' prices in the same manner as any other building-supply dealer.

Accordingly, we started selling to the Golden Gate Building Material Company and have since continued."

Not only is the Government claim refuted by this testimony, but the Government witness Barrymore testifies that at no time did the permit system apply to materials used in the San Joaquin Valley (p. 327). The same incident is dealt with in appellant's brief, pages 106 and 107.

"*Utah.*"—The Government, at page 63 of its brief, recites a portion of the evidence of the transactions between one Alexander Gray, a union official in San Francisco, and the Jumbo Plaster Company of Utah. It is claimed that the evidence shows that the Jumbo Company refused to continue selling to Gray because he was a union official. This testimony is dealt with in appellant's brief at pages 101 and 102. It appears from the affidavit of Payne, the principal officer of the Jumbo Company, that his refusal to continue to sell to Gray had nothing to do with industrial conditions in San Francisco or with the permit system. He testifies that certain of the shipments were delayed by reason of floods and damage to the plant in Utah; that later he visited San Francisco with the purpose of establishing a local agency. There he met Gray and found that he was not a recognized dealer; had falsely stated the destination of the plaster he was purchasing; had given a false name and had no facilities for handling the product. Thereupon the Jumbo Company appointed Henry

Cowell Lime and Cement Company as its exclusive agent and refused to accept orders from others, including Gray (pp. 269-272).

"Utah."—The Government, at page 67 of its brief, recites a portion of the evidence of the refusal of Jumbo Plaster Company of Utah to accept certain orders for plaster from Gray Thorning Company at Redwood City, Cal. The reason for this refusal is set forth in the testimony of Payne, president of the Jumbo Company (pp. 271, 272), who states that after the Cowell Lime and Cement Company had become the general agents in California for the Jumbo Company that company would not accept orders from other concerns.

"2—Cement."

"Kansas."—The Government devotes pages 68 to 74 of its brief to the recitation of a portion of the evidence of the dealings between Best Brothers, of Kansas, and the Golden Gate Building Materials Company and McGruer and Simpson, one of the "the big five" plasterers. It is claimed that this evidence shows an attempt by these defendants to interfere with interstate shipments. A reading of the evidence will convince that the incident had no connection with the industrial dispute in San Francisco, but represented the protest so often referred to, of recognized dealers against the selling of materials at dealers' prices to the Golden Gate Company, which was a combination of consumers desiring to obtain dealers' prices. It is also

clear, from the evidence, that some of the San Francisco competitors of the Best Company were using the industrial dispute as a cloak for securing trade advantages for their own type of material over that of Best. This was finally realized by the representative of the Best Company, who, on May 18, 1923, wrote to his principal (p. 338): "The outstanding feature of this market for your products is a kaleidoscopic change from an effort to establish an 'open shop' to a battle for trade supremacy between the proponents of hardwall and of lime-gauged mortar." The same letter states that no discrimination was being practiced against "the big five" plasterers, and that the Industrial Association refused to permit itself to be used as a weapon to gain personal advantages by the various firms engaged in the plaster business. On May 27, 1923, the principal officer of Best Cement wrote to his San Francisco agent (p. 334), stating that he realized that the protests made by Mr. George against selling to the Golden Gate Company and McGruer and Simpson were in reality an attempt by Mr. George, as president of the Cowell Lime and Cement Company, an important factor in the plaster business, to discourage the use in California of Keene cement, a competing product.

Lomax, the agent in San Francisco of Best Brothers, further testifies (p. 462):

"At no time previously and at no time since has any condition been imposed requiring any one to furnish a permit before

said John R. Steffens Lomax Company would ship to them any of said Best Brothers Keene's cement; and upon no occasion was any threat made to us concerning our shipping said Keene's cement in without permits.

"Keen competition exists in the plastering industry between the users of hardwall plaster and the users of lime-gauged Keene's, the latter substance being a material frequently used instead of hardwall plaster. Affiant knows that in pushing the sale of Keene cement he had the aggressive competition of the manufacturers and sellers of hardwall. That, aside from said competition of the sellers of said hardwall, affiant has not been, nor has the firm of which he is a copartner ever been, interfered with in any shipment of any Keene's cement from outside the State of California into the State of California; nor has he been threatened in any manner if he or his firm shipped, and at no time by threat, persuasion or intimidation has any effort been made to force affiant to sell only on terms."

The evidence on this particular matter occupies many pages in the transcript and in the Government's brief. We submit that a reading of the evidence will show that the incident has no significance or importance in the case. The matter is dealt with briefly in appellant's brief at page 104.

"*Ohio.*"—The Government, at pages 74 to 82 of its brief, recites a portion of the evidence respecting the transactions between Sandusky

Cement Company of Ohio and Gray Thorning Lumber Company of Redwood City, Cal. It is claimed that this evidence shows a refusal by the Sandusky Company to sell cement to Gray Thorning, because it could not secure a permit from the Builders Exchange.

This incident is dealt with in appellant's brief at pages 102-104, where the evidence is discussed. The evidence shows that the quantity of cement sold and shipped by the Sandusky Company to California constantly increased during the period in question, and that all these shipments were made without permits (pp. 443-4). It also appears from the testimony of Rodgers (p. 442), sales manager of Sandusky Portland Cement Company, that its refusal to continue to sell to Gray Thorning was not based upon the failure of that company to submit a permit, but that this was the reason given by the Sandusky Company to Gray Thorning to discourage it from sending in further orders; that the reason the Sandusky Company desired to discourage further orders of Gray Thorning was because the latter company was diverting the cement purchased by it into territory which had been exclusively allotted to other dealers, and the Sandusky Company realized that it would lose the business of said dealers if the practice were permitted to continue.

“3—Lime.”

“*Washington.*”—At page 82 of the Government’s brief is set out a portion of the evidence respecting the dealings of the Tacoma and Roche Harbor Lime Company, of Washington, with the Civic Center Supply Company, of San Francisco, and Gray Thorning Company of Redwood City, California. It is claimed that this evidence shows that the lime company refused to sell lime to these companies because they could not furnish permits. We submit that the evidence shows directly to the contrary. Reveal, the local agent of the lime company, testifies (p. 467):

“This affiant further alleges that as agent for said Tacoma and Roche Harbor Lime Company, he has, during all of said periods sold lime without restriction to any dealer or purchaser, whether that dealer or purchaser had permits or did not have permits. The product of the Tacoma and Roche Harbor Lime Company is manufactured in the State of Washington, and affiant and said Tacoma and Roche Harbor Lime Company have never refused to sell to any one on account of the proposed purchaser not having a permit of the Builders’ Exchange.”

As to the charges preferred against Reveal at the Builders Exchange, W. H. George, president of that organization, testified (p. 455) that such charges were preferred because it was thought that

Reveal was dealing with local lime; that when it was found that Reveal was selling lime produced outside the State, the charges were immediately withdrawn. "And said proceedings against said Reveal were stopped merely because of a desire on the part of the Builders Exchange and others to avoid any possible interference with Interstate Commerce."

It therefore appears from the evidence that Roche Harbor lime was, during all this period, sold without the requirement of a permit and that the Builders Exchange withdrew all charges when it learned that Reveal was selling lime coming from another State. This matter is also dealt with in appellant's brief at page 109.

"*Victoria, British Columbia.*"—At page 84 of the Government's brief, a portion of the evidence respecting the dealings between Hughes, the San Francisco agent for the Pirie Lime Syndicate of British Columbia and the Golden Gate Building Materials Company. It is claimed that the evidence shows that a contract between the Golden Gate Company and Hughes was cancelled, owing to the opposition of the Industrial Association. The evidence shows that the agreement was cancelled at the request of the Golden Gate Company, which found that it could purchase the lime cheaper in San Francisco (p. 460).

On page 85 of the Government's brief, the following appears:

“The record does not support the following statement in appellant’s brief at page 108:

“ ‘This testimony shows conclusively that the request for the cancellation originated with Golden Gate Company itself, which, prior to the date of shipment, had embraced the American Plan.’ ”

This comment illustrates the difficulty of collating and remembering the evidence. We direct attention to the following evidence in support of our statement.

Hughes, agent of Pirie Lime Syndicate, testifies (p. 393): “ * * * upon the earnest solicitation of the said Golden Gate Building Materials Company, it was mutually agreed between affiant and said Golden Gate Building Materials Company to cancel said contract; * * * ”

Leon G. Levy testifies (p. 460) that “said Hughes complained to affiant that the five plasterers connected with the Golden Gate Building Materials Company refused to accept the 1,500 barrels of lime that the Golden Gate Building Materials Company had ordered of said W. K. Hughes because of the fact that they could buy said lime at a cheaper price in the market of San Francisco than the said W. K. Hughes was contracting to furnish it for.” The same witness testifies that the Golden Gate Company had accepted the American Plan (p. 460). The letter cancelling the contract appears in the transcript (p. 430) and reads as follows:

"W. K. HUGHES & Co.

Nov. 4, 1922.

Golden Gate Building Materials Co.,
559 10th Street,
San Francisco.

DEAR SIRs:

Confirming the writer's conversation with your Mr. Knowles relative to the purchase thru us of 1,500 barrels of lime, we now find that it is convenient to make cancellation of this contract *in line with Mr. Knowles request*, and we therefore have considered the contract cancelled by mutual agreement.

Very truly yours,

W. K. HUGHES & Co.,

By ———

President.

The only significance of this matter is to illustrate the difficulty of collating the different parts of the transcript and how easy it is to overlook important testimony.

"*Vancouver, British Columbia.*"—At page 85 of the Government's brief, the statement is made that Horton, of the Portland Lime and Cement Company of British Columbia, refused lime to Gray Thorning Company, of Redwood City, Cal. The only reference to this in the transcript is in an affidavit by Thorning, which reads (p. 317): "That also Gray Thorning Lumber Company was refused lime by Mr. Horton of the Portland Lime and

Cement Company, which produces lime at Blubber Bay, Vancouver, British Columbia." The reason for the alleged refusal, its date or the surrounding circumstances do not appear. Nor does it appear that the refusal was caused by or due to any acts on the part of these defendants.

(d) Evidence on So-called Plumbing Refusals.

"Plumbing Supplies."

In the brief of the Government, commencing at page 85, much space is devoted to the quotation and discussion of a portion of the evidence on the alleged refusal of plumbing-supply houses in San Francisco to sell to contractors who were operating on the closed-shop basis. It is sought to make out that the permit system covered plumbing supplies.

The Permit System at no time covered plumbing supplies (p. 445).

In April, 1922, the plumbers struck to enforce their demand for the closed shop on all building work. This was more than a year after the beginning of the general building strike in May, 1921, and six months after the termination of the general strike in September, 1921. Up to April, 1922, the plumbing-supply houses had not been directly involved, but at that time a number of plumbing-supply houses, in order to protect themselves against boycott and blacklist by the strikers, refused to sell their materials to the unions or their confederates (p. 157). In connection with these

refusals, the names of the plumbers who were trying to enforce the closed shop and who were discriminating against union men were distributed among the plumbing supply houses in San Francisco. There is evidence that, in some cases, the plumbing-supply houses refused to sell materials which were on their shelves in San Francisco to contractors who were operating on the closed-shop basis. These refusals are entirely separate and independent of the permit system. They did not take place until more than a year after the permit system was put into effect; different parties were involved and there was no connection either in plan or operation with the permit system.

These refusals, and the circulation of the lists among the plumbing-supply houses, ceased in November 1922, more than six months before the bill in this action was filed, and should therefore be disregarded.

After that date, there was absolutely no restriction upon the purchase of plumbing-supplies by any person, no matter what his views or practices with respect to the closed shop.

We submit, therefore, that the so-called plumbers' refusals and the circulation of the lists among the plumbing-houses in San Francisco, both of which absolutely ceased six months before the bill in this case was filed, are of no importance or significance in this case.

The permit system covered certain State materials only. Permits for these materials were not issued to any person who enforced the closed shop or discriminated against non-union men. If a builder employed a plumbing contractor who enforced the closed shop, he was denied a permit for sand and gravel. This was the case during all the time that the permit system was in effect. The general strike was over in September, 1921. In March, 1922, the plumbers, plasterers and bricklayers struck to enforce the closed shop, but the other crafts did not strike. The permit system, therefore, operated against the plumbers, plasterers and bricklayers only. It did so, not by denying them plumbing or other supplies coming from without the State, but by denying them State materials; cement, lime plaster, ready-mixed mortar, brick and clay products, and rock, sand and gravel, the materials and the only materials which were ever subject to the permit system.

Counsel for the Government seeks to make out that there was a connection between the permit system and the plumbers' refusals after such refusals had terminated in November, 1922. This claim is not supported by the evidence. The permit system operated after November, 1922, the date on which the plumbers' refusals ceased, just as it had prior to that date. It never covered plumbers' supplies, but permits for State materials were, at all times, refused to persons who employed plumbing contractors who enforced the closed shop and dis-

criminated against non-union men. This presents the important question in this case. Was the refusal of permits under such circumstances a violation of the Anti-Trust Act? Was the denial of San Francisco sand to an owner who employed a closed-shop plumber an interference with interstate commerce and a violation of the Anti-Trust Act?

Counsel for the Government makes his argument on this point at page 91 of his brief. He says:

"The plan was in force not to issue permits for any building material until it was known that the plumbing contractor would support the American Plan. If the plumbing contractor was not satisfactory, none of the articles on the permit list could be purchased; and if none of the articles on the permit lists could be purchased, then, necessarily, the plumbing supplies could not be purchased."

As has been shown, certain State materials only were on the permit list. Those materials were denied in San Francisco for use in San Francisco to any one who employed a closed-shop plumbing contractor. The owner and the contractor could buy all of the plumbing materials they desired, without any restriction whatever, but they could not buy San Francisco sand or other State materials covered by the permit system. It is claimed that this is an interference with interstate com-

merce in plumbing materials, although any one could purchase plumbing materials without a permit, and although there is no evidence in the record that any person ever failed to or was unable to purchase plumbing materials because of a refusal to sell the State materials subject to the permit system.

We submit that any restraint of interstate commerce in plumbing materials which might be caused by a refusal to sell sand is so remote, secondary, indirect and incidental as not to violate the Anti-Trust Act. The strike in the building trades in San Francisco, which tied up building construction in which interstate materials formed a substantial part, was a much more direct interference with interstate commerce than any act on the part of these defendants, and yet no one would claim that the unions, in calling the strike, violated the Anti-Trust Act.

The so-called plumbers' refusals are also dealt with at page 22 of appellants' brief, where the reason for the inclusion in the record of so much evidence on this point is fully explained.

(e) Summary of Evidence of Alleged Direct Interferences.

1. These instances, upon investigation, are found to comprise not more than ten in all, scattered over almost two years of time.

2. The total amount of materials involved was small, probably not to exceed \$30,000, during a period when more than \$100,000,000 of building work was being done in San Francisco.

3. That but four purchasers in all were involved:

(a) Golden Gate Building Materials Company, a company formed by five boss plasterers to obtain dealers' prices and who were, therefore, fought by all legitimate dealers, not by reason of the industrial controversy, but for trade reasons. The five owners of the company were members of the Builders Exchange and had no difficulty in securing materials;

(b) Gray Thorning Company, which was invading territory exclusively allotted to other dealers;

(c) Alexander Gray, a union official masquerading under an assumed name and giving false information as to the destination of materials sought to be purchased;

(d) Civic Center Supply Company.

4. In no case have the alleged refusals been connected with the principal defendants, or shown to have been pursuant to any plan or agreement between the defendants in San Francisco.

5. Each and every alleged refusal is controverted by evidence of at least equal weight, showing that the alleged interferences did not in fact

take place, or were due to trade causes, independent of the American Plan and the permit system.

6. The refusals to sell plumbing supplies ceased in November, 1922, six months before the bill in this case was filed.

The evidence on the so-called direct interferences does not justify any decree against these defendants. The defendants not only deny that they had any intent or plan to interfere with interstate shipments, but they further contend that they did not in fact interfere with any interstate transaction, and that the evidence so shows.

(f) Examination of Argument for Government.

“The Argument.”

In its argument the Government announces the following propositions:

“(a) The Object Sought to be Accomplished by the Defendants Was Unlawful.”

The object sought to be accomplished by these defendants was not only lawful, it was laudable. The object sought was the freeing of the building industry in San Francisco from the closed-shop restriction which prevented competent workmen from obtaining employment because they did not belong to a San Francisco labor union. Not only was the object lawful, but the question as to whether it was lawful or unlawful is of no importance here,

unless these defendants in seeking to accomplish their object violated the Anti-Trust Act. The learned judge in the court below said respecting the American Plan (p. 35): "With the merits or demerits of this plan, as with the recurring conflicts between employers and labor unions, this Court, acting within its jurisdiction, cannot lawfully be concerned. * * * The purpose therefore of the defendants, in so far as it may be sought or attained without running counter to the Federal laws, cannot be interfered with by a Federal Court."

The defendants were tried before a State court and were found not to have violated the Anti-Trust Act of California.

"(b) The Means Employed by the Defendants to Accomplish Their Object Directly Restrained Interstate Commerce."

This turns upon a question of fact. The defendants contend that the evidence shows that they did not interfere with interstate goods or shipments and studiously refrained from doing so. Whether the operation of the permit system on State goods amounts to an unlawful restraint of interstate commerce is a question of fact and law which is presented to this Court for decision. *Duplex vs. Deering*, *Eastern States Retail Lumber Dealers Association vs. United States*, and *Montague vs. Lowry*, cited by the Government, are all cases in-

volving a concert of action in a number of States, intended to, and which did, directly interfere with and restrain interstate commerce. This case, on the contrary, involves acts in San Francisco only, affecting the sale for local use of State-produced materials, without intention to interfere with interstate commerce and which, in fact, did not interfere with interstate commerce. The cases mentioned are fully discussed in appellants' opening brief.

“(c) *The Restraint on Interstate Commerce was Material.*”

It has already been shown that these defendants did not interfere with shipments of materials produced in other States.

Counsel devotes some pages to an attempt to distinguish the *Herkert and Meisel* case and the *Coronado* case from the case at bar. It is claimed that they are to be distinguished because they involved manufacture and mining. The attempt of counsel to distinguish these cases makes their similarity clearer. All three were local, confined to a small area in a single State, and arose out of local industrial controversies. In the *Coronado* case mining was restrained; in the *Herkert and Meisel* case manufacturing was restrained; and in the case at bar if there was a restraint of anything, it was a restraint of building. Mining, manufacturing

and building are not commerce. In the *Coronado* case the strikers prevented the mining of coal and its shipment in interstate commerce, actually destroying one car ready for shipment. In the *Herkert and Meisel* case, the strikers announced their intention of destroying the interstate business of the manufacturer, who shipped 90 per cent of his product in interstate commerce and who imported his raw materials from other States. When the defendants forced him to close down, the manufacturer had unfilled orders for interstate shipment amounting to more than a hundred thousand dollars. The strikers forced the factory to close, the manufacturer of trunks and their transportation out in interstate commerce ceased, and of necessity the importation of raw materials in interstate commerce must also have ceased. Yet it was held in both cases that the interference with interstate commerce resulting from the strikers' acts did not constitute a violation of the Anti-Trust Act.

And so here. The defendants to rid the building industry in San Francisco of the closed-shop restriction, refused to sell State-produced materials for use in San Francisco on closed-shop jobs. It is not shown that this resulted in the importation of any less quantity of material from other States. But even if it were shown that less materials were imported from without the State, it would not be a violation of the Anti-Trust Act; just as in the *Coronado* case the fact that the coal did not go out into interstate com-

merce was held not to be a violation of the Act; and in the *Herkert and Meisel* case the fact that the trunks did not go out into interstate commerce or the raw materials come in was held not to constitute a violation of the Act. If the argument of the Government were to be logically followed, the strike of the building workers which tied up building and resulted in a stoppage of the importation of building materials produced in other States must be held to be a violation of the Act. We submit that if there was any diminution in interstate commerce resulting from the acts of these defendants, which fact does not appear in the proof, such diminution does not make these defendants liable for a violation of the Anti-Trust Act. As in the *Herkert and Meisel* and *Coronado* cases, any restraint of interstate commerce was so remote, incidental, and secondary as not to come within the Act.

Conclusion.

This reply brief has of necessity been hastily prepared and is not intended as a general discussion of the facts or the law of the case. Such discussion will be found in appellant's opening brief. The purpose of this reply brief is to direct the attention of the Court to what we conceive is the important question in this case and to answer the various statements of evidence and fact contained in the brief for the Government. As an aid to the

understanding of the facts we have inserted a
endar of the principal events.

Respectfully submitted,

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WASHINGTON, *March* 10, 1925.

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In the Supreme Court of the United States

OCTOBER TERM, 1924

INDUSTRIAL ASSOCIATION OF SAN.

Francisco et al.

v.

UNITED STATES OF AMERICA

No. 365

BRIEF ON BEHALF OF THE UNITED STATES

STATEMENT OF CASE

[Italics in quotations are ours, if not otherwise stated.]

This is an action brought by the United States against the Industrial Association of San Francisco and others to enjoin the further execution of a conspiracy in restraint of interstate and foreign commerce in violation of the Sherman Anti-trust Act. The original bill was filed on May 26, 1923. (pp. 1-7.) A memorandum opinion by M. T. Dooling, district judge for the Northern District of California, was filed November 9, 1923. (pp. 34-37.) A final decree was entered by the District Court in favor of the Government December 19, 1923 (pp. 37-38), finding that the defendants were guilty of a conspiracy in restraint of interstate and foreign commerce (p. 38). The defendants were perpetually enjoined from engaging in the prac-

tices specifically mentioned in the decree, and jurisdiction of the District Court was retained for complainant to apply for further relief in the event that the defendants do not comply in good faith with the decree. The cause comes into this court upon appeal by defendants, who request that the decree of the District Court be reversed.

NOTE.—References to printed pages of the record are indicated thus, (p. —).

PLEADINGS

The defendants mentioned in the bill were the Industrial Association of San Francisco, California Industrial Council, Industrial Association of Santa Clara County, Builders Exchange of San Francisco, Builders Exchange of San Jose, Master Plumbers Association, and numerous corporations and individuals engaged in the transportation, distribution, and sale of building materials.

The defendant, Industrial Association of San Francisco, is described in the answer (p. 12) as a voluntary, unincorporated association of a large number of persons and firms residing in or doing business in the city and county of San Francisco, and was organized November 8, 1921. The members were from all walks of commercial and professional industry, including building, machine work, shipping, banking, lawyers, doctors, dentists, and storekeepers. (p. 13.) It is also alleged in the answer (p. 19) that the—

sole purpose of the organization of the Industrial Association, and the sole purpose

and the extent to which it is cooperating with the Builders Exchange of San Francisco or any of the other defendants, is for the purpose of maintaining an *open shop industrial condition* in the city of San Francisco.

The Builders Exchange of San Francisco was alleged in the answer to be a corporation organized under the laws of the State of California. (p. 19.) It maintained a system or bureau by means of which all members of said Builders Exchange might be informed as to the manner in which different contractors and sub-contractors were operating their business, whether the same was a "closed" or "open" shop, and that in connection therewith permits were issued to all persons operating on an "open-shop" basis (p. 24).

Master Plumbers Association of San Francisco is described in the answer (p. 23) as a voluntary corporation, organized under the laws of the State of California for similar purposes to those of the Builders Exchange.

The defendants are alleged to have engaged in a conspiracy to restrain trade and commerce among the several States in building materials in violation of the Act of Congress approved July 2, 1890 (26 Stat. 209). It is alleged that the defendants agreed to use and did use the following means and methods in furtherance of said conspiracy (pp. 3, 4):

- (1) Agreeing to refuse and refusing to sell, and refusing to permit others to sell to purchasers, prospective or otherwise, said

building materials unless they agree (a) to employ a foreman and at least fifty per cent of the laborers, skilled and unskilled, on buildings which they desired to erect, who were not in any way affiliated with, connected with, or members of any labor union so called, (b) to assent to carry out, and carry out, and be bound by this " American Plan " so called, as hereinbefore next set forth.

(2) Collusively bidding and refraining from bidding against each other for the furnishing of said building materials, for, or for the erection of, any building or buildings and parts thereof for the purpose of enhancing the price thereof and to prevent competitors from obtaining the contract therefor.

(3) Agreeing to determine and determining, arbitrarily, the persons, corporations and others who shall engage in the furnishing of building materials and in the construction of buildings or parts thereof.

(4) Coercing, intimidating, and preventing, by threats and otherwise, others from engaging as competitors in the business of constructing buildings and parts thereof, and from furnishing building materials therefor.

(5) Agreeing among themselves that no person or corporation, except members of the Builders' Exchange or the Industrial Association, shall engage in the business of erecting buildings or parts thereof or of supplying building materials therefor and

using and causing others to use threats and intimidation to keep competitors, potential or otherwise, from engaging in said business.

(6) Agreeing upon and fixing arbitrarily the wages of foremen, workmen, and laborers, skilled or otherwise, employed in or about buildings or parts thereof to enhance their profit or profits on any particular job or jobs.

(7) Agreeing to and fixing, arbitrarily, the person or persons who shall be employed as foremen, laborers and workmen, skilled or unskilled, in and about the construction of any buildings or parts thereof.

(8) Agreeing to distribute and distributing secretly among themselves and to others employed in the same or a similar business as themselves "green lists" so called, commonly known as "black lists" containing the names of persons, firms, and corporations who have rightfully refused to join in said conspiracy and to become members of said associations, and to agree and abide by the by-laws, rules, resolutions, and regulations thereof, or to be coerced into doing so by threats, fines, or otherwise.

(9) Coercing others from resorting to redress through the courts of this state or of the United States, by threats of fighting and delaying for long periods any suit or suits which might be brought against them by such persons to secure such redress, although well knowing that such persons had a lawful right to win such suits and to secure adequate and speedy redress in such way.

(10) Agreeing with banks, trust companies and other monied corporations and concerns to coerce, intimidate, and compel builders and others, competitors of said defendants, to join in said conspiracy and to become members of said associations and to agree to and abide by the by-laws, rules, resolutions and regulations thereof, by refusing or threatening to refuse loans to such persons necessary to start, continue, or complete their building operations and by calling in, or threatening to call in, at inopportune or unnecessary times loans already made by them on such building operations.

(11) Discriminating and causing others to discriminate against laborers and workmen, skilled or unskilled, engaged or to be engaged in and about building operations because such laborers and workmen were affiliated and connected with and members of any labor union so called.

(12) Agreeing to form and forming said Industrial Association of San Francisco and said Builders' Exchange of San Francisco with headquarters in the city of San Francisco aforesaid.

(13) Agreeing to be bound by, and being bound by, and carrying out the by-laws, rules, resolutions and regulations of said Industrial Association and said Builders' Exchange.

It is further alleged that the defendants have carried out the agreements and performed the acts above set forth and are continuing and will con-

tinue so to do and have restrained and are continuing to restrain a large and important part of the interstate trade and commerce described.

Other admissions in answers

In March, 1922, about ninety per cent of the mechanics working in the plumbing business in San Francisco were union men, but mingled with them were about ten per cent of non-union men (p. 16). In March, 1922, about ninety per cent of all the employers continued working on the American Plan. About April or May, 1921, some material houses, including some of the defendants, refused to sell to the unions materials to be used on "closed-shop" union work in the city of San Francisco (p. 17). It is alleged that permits were issued to all persons operating on the "open-shop" basis; that said permit system was operated by said Builders' Exchange in the city and county of San Francisco for the benefit and information of members and others residing in the city and county of San Francisco; that said permit system is operated by said Builders' Exchange for the purpose of making effective its rule and regulation in support of the "open-shop" plan of doing building work; that under the rules and regulations of said Builders' Exchange its members were required to operate upon the "open-shop" plan; and as a means or method of making effective said "open-shop" plan in San Francisco, said Exchange issued certificates or permits to persons doing building

work in San Francisco, thus enabling the members of the Builders' Exchange of San Francisco to know before making any contracts with such persons whether or not they were operating upon the "open-shop" plan (p. 24).

Injunctive relief awarded by final decree

The defendants and each of them and their members, officers, agents, servants and employees, and all persons acting under, through, by or in behalf of them, or any of them, or claiming so to act, were perpetually enjoined, restrained, and prohibited directly and indirectly, individually and collectively, from—

(a) Requiring any permit for the purchase, sale, or use of building materials or supplies produced without the State of California and coming into said State of California in interstate or foreign commerce.

(b) Making as a condition for the issuance of any permit for the purchase, sale, or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without said State of California.

(c) Attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within said State of California.

(d) Aiding, abetting, or assisting, directly or indirectly, individually or collectively,

others to do any or all of the matters or things herein set forth (p. 38).

It was also provided (p. 38):

That jurisdiction of this Court be and is hereby retained by the Court, and, in the event that defendants do not comply in good faith with this decree, complainant is accorded the right upon a proper showing to apply for further relief at the foot hereof.

THE PROOF

A. The combination and its purpose

In the joint answer of the Industrial Association of San Francisco, the Builders Exchange of San Francisco, the Master Plumbers Association, and others, it is stated that the sole purpose of the organization of the Industrial Association and the sole purpose and extent to which it is cooperating with the Builders Exchange of San Francisco, or any of the other defendants, is for the purpose of maintaining an American Plan industrial condition in the city of San Francisco (p. 19); that prior to February 1, 1921, the building trades industry in the city and county of San Francisco was on what is termed the "closed-shop" basis, and every workman in the building trades industry, excepting about one per cent, was a member of some building trades-union (p. 14).

The American Plan, as originally outlined, required a non-union foreman on every job (p. 136).

During the year 1921 it was the aim of defendants to have the proportion of non-union men in each craft approximately 50 per cent. (Letter of October 5, 1921, p. 123, Exhibit 8, p. 112.)

A resolution requiring the employment of a non-union foreman and at least 50 per cent non-union mechanics and laborers was passed by the Central Council of the Builders Exchange about the middle of the year 1921 (p. 395). It is claimed that the board of directors neither approved, ratified, or confirmed this resolution. The "open-shop" policy was duly and regularly made the active policy of the Builders Exchange by resolution regularly adopted in June, 1921, and each and all the members of the Builders Exchange pledged themselves to observe said "open-shop" rules (p. 453).

A. Knowles was ordered to discharge union plasterers working for him who would not abide by the American Plan (p. 321). F. H. Maynard told John Coefield that Grinnell Company of the Pacific would continue to refuse to sell any supplies whatsoever to any person more than one-half of whose employees were members of labor unions or whose foreman was a member of a labor union (p. 58). Frank McDonald testified that among the rules adopted by the Industrial Relations Committee was one that no permit should be granted to any person who employs a labor union foreman or more than one-half of whose employees are members of labor

unions (p. 84). The defendants claim that this practice was later modified.

The value of the building work done in the city and county of San Francisco during the year 1922, as shown by building permits, exceeded \$45,000,000, and for the first nine months of 1923 exceeded \$34,000,000 (p. 432).

Paul Eliel, a member of the staff of the Industrial Association, sent to the plumbers' supply houses lists giving the names of contracting plumbers in San Francisco not operating under the American Plan (p. 154, Exhibit 19). He testified:

“ there was a cooperative relationship between the two organizations ”

referring to the Builders Exchange and the Industrial Association (p. 159).

The Builders Exchange, incorporated July 5, 1890, had an official publication, in an issue of which, under date of April 15, 1922 (p. 113), is found the following statements:

Resolved, that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award for the year 1922, of the Impartial Wage Board, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all

crafts in the city and county of San Francisco for the balance of the year 1922.

ONLY ONE THING TO BE DONE

Every member of the Exchange must stand firmly behind the machinery created by the Exchange to meet the strike situation which confronts us. According to the newspapers, the unions are not striking for more wages or for better hours, but in protest against the American Plan. The public generally, and the Builders' Exchange in particular, feel that the action on the part of the Labor Council to force this issue on the eve of the biggest building *area* since the big fire is unwarranted, and, therefore, every member of the Exchange should stand as one man and see this fight through to the finish. The permit system has gone into effect, with the approval of the building material interests, and no one need apply for a permit unless he is running a strictly American Plan job and agrees to pay the wage scale as adopted by the Builders' Exchange. The permit office has opened, equipped with a full crew sufficient to care for all applicants without delay. A crew of inspectors will begin operations immediately. Every member is counseled not to start any job until he is sure the job is started right.

The above quoted resolution was adopted without dissent at a special meeting of the Council of

the Builders' Exchange, held on April 12, 1922 (p. 113).

A mimeographed letter containing this resolution was sent to all members of the Builders' Exchange, dated April 13, 1922 (p. 111).

To show the extent of the conspiracy we quote from the same number of the official publication (p. 114):

The Board of Directors appointed C. W. Gompertz as a delegate to represent the Exchange at a great Western conference of building interests now in session at Salt Lake City. *If the open shop is to be a complete success it is absolutely necessary that it be universally adopted. An open-shop policy in one city and a closed-shop policy in an adjoining city tends to demoralize building conditions in both places. It is the purpose of this conference to launch plans that will make for uniformity.*

The issue of the same official organ, dated April 29, 1922 (Exhibit 14, p. 125), gives a clearer statement of the scope of the plan (pp. 130, 131).

The American Plan is spreading rapidly in Buffalo. The latest convert is the Master Plumbers' Association. * * * An American Plan magazine is in immediate prospect through the initiative of the Associated Building Employers of Detroit, an organization comprising some 525 concerns employing about 7,000 men. * * * American Plan for lathers has been established in Syracuse, N. Y.

From the same issue we quote the following (p. 125):

The President's Corner. April 29, 1922: The Industrial Relations Committee at its meeting on Thursday evening, April 27th, passed unanimously a resolution authorized by the resolution of the Central Council dated April 12, 1922, to the effect that *all members of the San Francisco Builders' Exchange operating outside of the City and County of San Francisco* must comply with the American Plan and the Builders' Exchange wage scale the same as they do in San Francisco.

Members will please take notice.

The bricklaying situation is well in hand. Many of our members are proceeding with their work under the American Plan, and it is hoped that in the near future the entire craft will be at work.

The plastering situation is proceeding favorably. A number of American Plan jobs are running, and the indications are that the Master Plumbers will shortly accept the situation, and like all other loyal members of the Builders' Exchange, operate on the American Plan.

The plumbing situation, as far as the members of our Exchange is concerned, is gaining strength every day. Many plumbers are arriving, and it is expected that the plumbing business will be running on a normal basis, American Plan, within the next few days.—Builders' Exchange of San Fran-

cisco; W. H. George, president and chairman, Industrial Relations Committee.

We quote the following extract (p. 126) from the same issue:

VIRTUE HAS ITS OWN REWARD

George Wagner, general contractor, has just completed a million dollar project in Palo Alto at less than the guaranteed cost. and in appreciation of his services he has been handed a new job of \$600,000.

Mr. Wagner did all this work on a strictly non-union basis, as Palo Alto is in the jurisdiction of the San Jose B. T. C., and no union men were allowed to work on his job. Thus proving that large building projects can be undertaken and completed with non-union men at less cost than with union men.

The Industrial Association of San Francisco was organized November 8, 1921 (p 242). Its cooperation with the Builders Exchange is shown by Exhibit No. 18 (pp. 140-141), a letter on the stationery of the Industrial Association of San Francisco, dated July 1, 1922, was addressed to the Builders Exchange, from which we quote the following:

We hand you, herewith, list of jobs operating, in accordance with Mr. George's letter to you of June 29, copy of which was forwarded to Mr. Gross.

W. H. George was president of the Builders' Exchange. Under date of June 29, 1922, he wrote the following letter (p. 142):

The Builders' Exchange, Incorporated July 5, 1890, 180-188
Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 29, 1922.*

L. E. CRAWFORD, Esq.,

*Builders' Exchange, 180 Jessie Street,
San Francisco, Calif.*

DEAR SIR: Please discontinue issuing any permits to E. A. Johnson until he disposes of Mullin, the plumber.

Please discontinue issuing permits to Thos. Hamill until he disposes of plumbers Kohler and May.

Please discontinue issuing permits to Nelson Bros., Westwood Park, until they dispose of plumber Madden.

Issue no permits to A. C. Hammerton until he disposes of Gus May.

As heretofore instructed hold up all permits on jobs where Sugarman is the plumber.

Mr. Goss will file with you at once an amended list of any new jobs not started on which the contractors and owners have let the plumbing to any of the bad plumbers. Issue no permits to ever start these jobs. He will keep this list amended from day to day as new jobs are let.

As heretofore hold up all special jobs when requested to by Mr. Goss, letting me know at once what the jobs are. As a starter.

Peterson, Geary & Shannon, Beck Apartments, Power near Bush.

Galligo School to be handled as previously instructed.

Please call to my attention any other jobs that should be added to this list which you take from your present records.

Yours very truly,

BUILDERS' EXCHANGE
OF SAN FRANCISCO.

(Signed) W. H. GEORGE,
President and Chairman
Industrial Relations Committee.

WHB-b.

CC. Mr. Moss.

Similar communications were sent by the Secretary of the Industrial Association to the secretary of the Builders Exchange (pp. 142-150).

These letters of the association were addressed to Mr. Crawford (secretary, p. 110) to call his attention as an employer of the Builders Exchange to those specific jobs on which the plumbing was not being done on the American Plan (pp. 150, 151).

William P. Goss was president of the Master Plumbers Association. He telephoned Crawford on several occasions calling attention to cases where plumbers had let contracts to building contractors who were not operating on the American Plan. Crawford, pursuant to instructions, held up specific jobs when requested to do so by Mr. Goss (p. 151). The campaign to put the American Plan into effect started on the 11th day of June, 1921, when the

Central Council passed a resolution as follows (pp. 103, 104):

Resolved by the Central Council of the Builders' Exchange, all of the thirty-five crafts more or less affiliated with the said Exchange being present and participating, that preferences in deliveries of building materials within the county of San Francisco be made to those contractors abiding by the rules, regulations and decisions of the Central Council of the Builders Exchange; and that the Central Council of the Builders Exchange take all necessary steps to keep the various crafts advised of the names of those persons and firms strictly observing its rules, regulations, and decisions.

Another resolution was passed June 13, 1921, as follows (p. 104):

It was regularly moved and seconded and unanimously carried by a standing vote, that the following resolution be adopted:

Resolved, that the Builders Exchange, through the Central Council, go on record as endorsing the actions of the Conference Committee and the Advisory Board in every particular in their efforts which have resulted in work starting June 13th, with endorsed wage scale and American Plan in effect.

The action of the Central Council was confirmed by the Board of Directors of the Builders Exchange June 14, 1921 (p. 103).

The Board of Directors of the Master Plumbers Association passed a resolution July 19, 1921, giving its full support to the policy set forth by the Builders Exchange known as the American Plan (p. 105). However, at the meeting of the Central Council of the Builders Exchange, held April 12, 1922, at which W. H. George, president of the Builders Exchange, presided, an aggressive campaign was outlined to force all contractors connected with the building industry in the City and County of San Francisco to adopt the American Plan (pp. 113-114).

B. Means adopted by defendants to restrain trade

Having adopted a policy to control the building industry in San Francisco, the defendants proceeded to force everyone connected, directly or indirectly, with that industry to conform to the American plan. It was agreed by and between the defendants that no building material would be furnished any owner, contractor, or sub-contractor unless he agrees to adopt the American Plan and to cooperate in the general conspiracy to prevent any building from being erected or any repairing job being done unless in strict accordance with the dictates of the combination. When it is remembered that the building operations in San Francisco during 1922 amounted to \$45,000,000 and that ninety-nine per cent of the workmen engaged in the building industry were members of some building

trades-union (p. 14) and that it was the purpose of the defendants to make "the American Plan one hundred per cent successful" (p. 106), it is easy to understand that force was employed to accomplish the object of the conspiracy. The means of compelling compliance with the purposes of the combination and to prevent any contractor or builder from getting materials were as follows:

1. The establishment of the permit system.
2. Pledges from contractors to run all jobs on the American Plan.
3. Warnings that permits would be refused if the contractor failed to run jobs on the American Plan.
4. Inspectors visited each job and made daily reports as to the number of union and non-union men employed on each job.
5. A grievance committee was appointed and members were tried, fined, or expelled for selling to persons not operating on the American Plan.
6. Lists were distributed of jobbers who were not operating under the American Plan similar to "black lists."
7. Letters to owners.
8. Compelling breach of contracts.
9. Cooperation with large manufacturers outside the State of California and their agents within the State.

1. The permit system

The machinery for carrying into effect the plan of the defendants to prevent any contractor not

working on the American Plan from getting any materials was placed in the hands of the Industrial Relations Committee of the Builders Exchange, of which W. H. George, president of the Exchange, was chairman. L. E. Crawford was made secretary of this committee (p. 109). He commenced work on April 13, 1922. The expense of the work, which was great, was defrayed by the Industrial Association of San Francisco (p. 152).

A permit bureau was established by the Industrial Relations Committee on or about April 12, 1922 (p. 137). The permit office opened equipped with a full crew sufficient to care for all applicants without delay (p. 113). In the issue of the official publication, April 15, 1922, it was stated (p. 113):

The permit system has gone into effect, with the approval of the building materials interests, and no one need apply for a permit unless he is running a strictly American Plan job and agrees to pay the wage scale as adopted by the Builders' Exchange.

On April 13, 1922, a letter was addressed to all members of the Builders Exchange, stating (p. 114):

The permit system is again at work so far as cement, lime, ready-mixed mortar, plaster, red brick, fire and face brick, terra cotta, clay products, and rock, sand and gravel is concerned. All members of the Builders' Exchange in applying for permits must have in mind that they are required to strictly

carry out the American Plan and to pay the Builders' Exchange wage scale.

* * * * *

Don't ask for a permit unless you intend to comply.

Any person receiving a permit and not complying need not apply for any more permits.

The actual form of the permit was as follows (Exhibit No. 12, p. 123) :

Date, July 5, 1922. No. 11693. Release for building materials. Name, McDonald & Kahn. Location of job, cor. Sacramento & Power. Materials, 1 c/1—(evidently meaning 1 carload)—grey cement. Builders' Exchange, by ———, Chairman Strike Committee.

Copies of such permits were issued by L. E. Crawford, secretary of the Industrial Relations Committee of the Builders' Exchange. Permits for the release of building material were also issued consecutively. A new series was inaugurated April 23, 1922, since which time approximately 28,000 permits have been issued. Prior to that time, six to eight thousand had been issued (p. 124). The permit system may be better understood by an examination of the following exhibits:

The Builders' Exchange, Incorporated July 5, 1890, 180-188
Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *April 12, 1922.*

At a regularly called meeting of the Central Council of the Builders' Exchange held

this 12th day of April, 1922, a quorum being present, the following resolution was made, seconded and carried: "At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the city and county of San Francisco for the balance of the year 1922."

The Industrial Relations Committee of the Builders' Exchange begs to advise you that in order to carry out fully the terms of the resolution it will immediately be necessary to install the permit system so far as cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products, also sand, rock and gravel are concerned.

Therefore, the permit system will operate for the above materials effective 8 a. m. Thursday, April 13, 1922. Will you kindly be governed accordingly.

If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to *all other materials used in the building trades.*

Your whole-hearted cooperation is necessary, will be appreciated, and will soon end the present controversy.

Yours very truly,

BUILDERS' EXCHANGE OF
SAN FRANCISCO,
By COMMITTEE ON INDUSTRIAL
RELATIONS,
W. H. GEORGE, *Chairman.*
(p. 137.)

The Builders' Exchange, Incorporated July 5, 1890, 180-188
Jesse Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *April 26, 1922.*

Referring to our letter of April 12th, ordering in the permit system so far as cement, lime, plaster, ready-mixed mortar, common brick, fire and face brick, terra cotta and all clay products, also sand, rock and gravel are concerned. Please carefully adhere to the following three points:

1. The permit system applies not only to consumers but also to dealers. No department or class of deliveries is excepted. The permit system is to cover all deliveries.

The words "consumers," "dealers," and "all" are underscored.

2. Permits must (underscored) be on file with all dealers and manufacturers for all materials released.

3. All released materials must be delivered to the places called for by the permit.

4. The permit system is hereby extended to take in all deliveries in San Mateo and Santa Clara Counties.

Yours very truly,

BUILDERS' EXCHANGE OF

SAN FRANCISCO,

By INDUSTRIAL RELATIONS COMMITTEE,

W. H. GEORGE, *Chairman.*

(pp. 137-138.)

The Builders' Exchange, Incorporated July 5, 1890, 180-188
Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 7, 1922.*

An impression seems to be prevalent in some quarters that certain jobs have blanket permits or that it is permissible to deliver to them because they are supposedly American Plan jobs throughout.

Please be advised that this is not so. Everybody is treated alike and there are no special privileges. Be sure you have on hand a permit for every delivery or carload shipment.

Yours very truly,

BUILDERS' EXCHANGE OF SAN FRANCISCO.

W. H. GEORGE,

President and Chairman Industrial

Relations Committee.

(p. 138.)

The Builders' Exchange, Incorporated July 5, 1890, 180-188
Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 21, 1922.*

Effective at once, wall board, button lath, Keene cement, and all plater products are

added to the list of goods to be permitted in San Francisco, San Mateo, and Santa Clara Counties.

Yours very truly,

BUILDERS' EXCHANGE OF SAN FRANCISCO.

W. H. GEORGE,

*President and Chairman Industrial
Relations Committee.*

(p. 138.)

The Builders' Exchange, Incorporated July 5, 1890, 180-188
Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 30, 1922.*

Effective at once and to further carry out the resolution adopted by the Central Council of the Builders' Exchange on April 12, 1922, reading as follows:

"At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922."

It is now necessary to add to the permit system in addition to cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products,

sand, rock and gravel, wall board, button lath, Keene cement and all plaster products, for the Counties of San Francisco, San Mateo, and Santa Clara, the following articles:

Wire lath and metal lath of all kinds.

Wood lath.

Kindly be governed accordingly and see that you have a permit on hand for all L. C. L. as well as carload deliveries.

Yours very truly,

BUILDERS' EXCHANGE

OF SAN FRANCISCO,

W. H. GEORGE,

President and Chairman,

Industrial Relations Committee.

(p. 139.)

2. *Pledges from contractors*

Before any contractor was permitted to obtain a permit from the Industrial Relations Committee of the Builders' Exchange, he was required to sign a pledge card, of which the following is a copy (pp. 124-5, Exhibit No. 13):

No. 1.—Date, April 26, 1922. I (underneath) we, hereby state that this job (underneath) shop, will be run on the American Plan in all crafts and pay the wage scale of the Impartial Wage Board. Location: S. E. corner 8th and Howard Street. Kind of work: Concrete building. New factory building. Permit No. 5379-82. (Signed) Cahill Brothers, John R. Cahill. 1,200 barrels gray cement; 1,000 yards rock or gravel; 500 yards sand.

These pledge cards were signed by contractors in the presence of the secretary or some one connected with the department of the Industrial Relations Committee of the Builders' Exchange and when signed were delivered to the Secretary (p. 124). Twelve thousand of these pledge cards in the form of Exhibit No. 13 (p. 124-125) were signed and delivered to the secretary of the Industrial Relations Committee of the Builders' Exchange since April 13, 1922. Not only contractors were required to sign such pledges, but property owners who desired such building permits were required to sign such pledge cards (p. 135). Some of the applicants for permits refused to sign the pledge card and in such cases permits were refused (p. 139).

On June 21, 1922, wall board, button lath, Keene cement, and all plaster products were added to the list for which permits were required (p. 138). On June 30, 1922, wire lath and metal lath of all kinds, and wood lath were added (p. 139). The lath wallboard and Keene's cement were not manufactured within the State of California, but were shipped from other States (pp. 75, 454). The permit system was also extended to cover the counties of San Mateo and Santa Clara.

3. *Warnings*

In order to carry out the conspiracy and make it more effective, warnings were sent out to contractors that in applying for permits they were required to strictly carry out the American Plan,

and any person receiving a permit and not complying need not apply for any more permits (p. 114). On April 15, 1922, letters were sent out by the Industrial Relations Committee to contractors who were not running on the American Plan in San Francisco from which the following is quoted (pp. 110-111):

It is called to the attention of the committee that your shop is still running on the Union basis. On receipt of this letter will you correct immediately this situation? *On common with all other Master Plumbers, your business must be run on the American Plan.* Will you kindly call up the writer and advise him that this action has been taken?

Yours very truly,

BUILDERS' EXCHANGE

OF SAN FRANCISCO,

W. H. GEORGE,

President and Chairman,

Industrial Relations Committee.

On April 13, 1922, a mimeographed letter was sent out to all members of the Builders' Exchange (pp. 111, 112), reading in part as follows:

You are particularly requested to make sure before applying for a permit that your job is running on the American Plan. All jobs will be regularly inspected, permits will not be again granted to any member or non-member of the Builders' Exchange who secured a permit and then does not run his job on the American Plan and pay strictly the

Builders' Exchange wage scale and no more
in any way, shape or form.

Yours very truly,

BUILDERS' EXCHANGE
OF SAN FRANCISCO,
BY COMMITTEE ON IN-
DUSTRIAL RELATIONS,
W. H. GEORGE, *Chairman.*

4. *Inspectors—the character and effect of
their work*

In order more effectively to carry out the purpose of the conspiracy, inspectors were employed by the Industrial Relations Committee of the Builders' Exchange. The inspectors appointed by the Industrial Relations Committee turned in duplicate reports each day after canvassing the various jobs to see that they were operating on the American Plan, to the Secretary of the Committee, of which the following is a copy (p. 135):

Daily report of shop and of jobs operating. (Report each craft and common laborers, separately.) Contractor: Monohan & Slaven; craft, plumbers; location of shop—job, 745 Ellis Street; signs put up (yes or no) blank; foreman's name, blank; remarks, blank; craft, plumbers; No. union men, blank; wages, blank; number non-union men, 2; wages, \$9; union or non-union job, blank; dated May 12. (Signed) A. Hutchinson.

These inspectors were sent out for the purpose of ascertaining and checking up on how many union and non-union men were employed on each job. W. H. George instructed the witness (L. E. Crawford) to refuse a permit to contractors who were not operating under the American Plan (pp. 136, 150).

The effect of the work of inspectors is illustrated by the letter, dated June 29, 1922 (p. 142), quoted at page 16 of this brief.

When the inspector reported a job which was not operated in conformity with the demands of defendants, a letter was sent similar to Exhibit No. 11 (p. 123), of which the following is a copy:

**The Builders' Exchange, Incorporated July 5, 1890,
180-188 Jessie Street. Phone, Sutter 6700**

SAN FRANCISCO, CAL., Oct. 5, 1921.

E. SUGARMAN,

4415 Calif. St., San Francisco, Cal.

DEAR SIR: To-day's inspection report on your job located at 14 Ave. 100 N. of Balboa shows that the following crafts are employed, and the number of union and non-union men employed in each craft:

Crafts, plumbers, non-union 1; union men 1.

In the carrying out of the American Plan the proportion should be nearer 50 per cent of each.

The inspection report also shows that the foreman is a union man. He must be a non-union man. See trade rule No. 12.

Trusting that for the proper carrying out of the American Plan that you will correct this situation at once, we remain

Yours very truly,

BUILDERS' EXCHANGE OF

SAN FRANCISCO,

By its CONFERENCE COMMITTEE,

W. H. GEORGE, *Chairman*.

(In the lower left-hand corner,
"WHG-s".)

*5. Grievance committee, trials and fines
of members*

James H. Pinkerton was a member of the Grievance Committee of the Builders' Exchange during the year 1922 (p. 213). He was a plumbing and heating contractor. He testified that S. W. Band was charged by the Grievance Committee with violating the rules of the Builders' Exchange. The particular rule, which had been adopted by unanimous vote, was to work on the American Plan. Band violated that rule by hiring only union men. He was fined and expelled for violating that rule (p. 213).

Pinkerton also testified that C. Peterson Company was found guilty of the same offense, was fined and suspended (p. 213). Pinkerton also testified that C. W. Higgins was found guilty of violating the same rule, was fined and suspended (p. 213). He testified that N. George Weinholz was treated in the same way for the same offense

(p. 213). A formal charge was filed against S. W. Band on April 20, 1922, signed by W. H. George, chairman (p. 214). A similar charge against C. Peterson & Company, dated April 12, 1922, was filed (p. 214). Other documentary evidence in connection with the charges and trial before the Grievance Committee are set out at pages 214 to 216, inclusive, of the record.

Gordon Chamberlain became a member of the Builders' Exchange in February, 1917, and continued until May, 1922. At that time he was cited to appear before the Committee of the Builders' Exchange (p. 296). The charges specified that he had been selling building materials without permits. He was fined \$250 (p. 296). After that date he was unable to purchase building supplies in San Francisco (p. 297).

The Tacoma & Roche Harbor Lime Company was charged with shipping a car of lime to Mr. Cambiano, secretary of the Building Trades Council of San Jose without a permit. The charges were filed January 16, 1923, and the company was cited to appear before the Grievance Committee on January 25, 1923 (p. 292). The trial did not occur, and the agent of the company, Mr. Reveal, was informed that it would not occur until after the disposition of the case of United States of America v. Industrial Association, in the Federal court (p. 314).

The effect of the threatened trial, however, was such that the Tacoma & Roche Harbor Lime Com-

pany refused to sell Gordon Chamberlain any lime. On February 21, 1923, the president of the company sold Chamberlain two hundred and fifty barrels of lime at \$1.80 per barrel "net f. o. b. direct at Roche Harbor, Washington." While this lime was shipped and ordered to be delivered to Chamberlain, who was operating under the name of Civic Center Supply Company, the lime was diverted by Reveal, and Chamberlain did not get it (pp. 297, 298).

On May 9, 1923, the president of the Builders' Exchange, W. H. George, wrote a letter relative to the activities of the Grievance Committee, from which we quote the following (p. 306):

If you are a consumer don't ask your dealer for stuff without getting the permit. If you are a dealer don't give the consumer any material until he presents you in hand with the permit.

Let's lighten the duties of the Grievance Committee and keep "fine" money in our own pockets.

6. *Lists were distributed of jobbers who were not operating under the American Plan, which lists are similar to and in effect are "black lists"*

These lists were being used effectively at the time this action was commenced by the Government on May 26, 1923. On August 1, 1923, G. L. Brown, salesman for the Sandusky Cement Company, wrote his company as follows (p. 386):

The following dealers are blacklisted:

Golden Gate Mtl. Co.

Civic Centre Sup. Co.

Gray-Thorning Lbr. Co.

On April 20, 1923, Mr. Schwaab, the salesman for the Sandusky Cement Company, wrote his company a letter in which he used the following language (p. 385):

I do not see any ground for worry over the subject of permits. The only outlaws are the Civic Center Supply Co., the Gray-Thorning Lumber Co., and the Golden Gate Materials Co.

On May 15, 1923, Mr. Schwaab again wrote his home office at Cleveland, Ohio, from which we quote the following (p. 351):

I am so sorry you again assume I am not disposed to take the responsibility of handling these *black-listed controversies*. It is simply a point of view and I have no desire or inclination to "pass the buck."

When I received your telegram advising that the Gray, Thorning Lumber Co. wanted our prices, I immediately wired the Exchange to learn if there had been any change in their status. When I learned they are still black-listed, I telegraphed you the information and suggested you quote and request permit.

On July 11, 1923, the Sandusky Cement Company wrote W. H. George, chairman of the Indus-

trial Relations Committee, from which we quote the following (p. 360) :

The writer feels that if you will kindly instruct your office to mail us, each month, a list of the dealers in good standing and immediately upon any dealer being placed on the black list, you so advise us, thus alleviating any possibility of our not working in harmony with your organization.

Mr. George was rather sensitive at this time to the use of the term "black list." The Government had commenced this action. On July 17, 1923, he wrote the sales manager of the Sandusky Cement Company at Cleveland, Ohio, from which we quote the following (pp. 357, 358) :

On the other hand it is not possible to send out a list. In the first place a list as you describe would probably be called a *black list*, as you very fairly named it, and would get us all in trouble, and in the second place in these troublesome times the situation changes so quickly that a list would hardly cover the necessity.

In writing to Mr. W. H. George on November 14, 1922, Mr. Schwab of the Sandusky Cement Company, said (p. 294) :

When I was at the Exchange last I made inquiry as to the *ineligibles* and was informed the Civic Center was the only one and no shipments have gone to them since our talk on the subject.

The idea of black lists had originated in connection with the plumbing supplies. Paul Eliel, a representative of the Industrial Association (p. 157), stated that before May 31, 1922, information from different sources was obtained as to which plumbers were operating on a union basis; that lists were sent out in order that the plumbing supply houses might be advised as to who were operating union shops; the Industrial Association sent out revised lists whenever there was a change. Mr. Eliel prepared these lists from inspectors' reports and other confidential sources (p. 157).

A. W. Middleton, manager of the Richmond Sanitary Manufacturing Company (p. 171) testified that lists similar to Exhibits 22, 23, and 24 (p. 165) were received by his company. These lists were handed to Mr. George Hines with instructions to refer any inquiry from anyone whose name was on the list to the witness, and that the company was in sympathy with the American Plan not to sell anyone who was on a union basis (p. 172). A number of witnesses testified to the conduct of defendants with reference to these lists. Mark E. Henderson talked with Mr. Leary, manager of H. Mueller Manufacturing Company, concerning the lists and was informed that they were lists of plumbing contractors who were supposed not to be operating in accordance with the American Plan; that it would be the policy of the Mueller Company to sell the

contractors who were operating under the American Plan (p. 173).

Mr. Stephen H. McCabe testified that thirty of these lists were received by the Grinnell Company of the Pacific, and it was decided not to solicit any business from any of those mentioned on the list (p. 174).

B. E. Powers testified that there were five different calls from people on the lists who were referred to the office and that the witness did not believe any of them were sold materials (p. 175).

Henry H. Kruger testified that Mr. Hennessey, whose name appeared on the list, applied to purchase material and was refused because his name was on the list (p. 176).

Harry L. Allison testified that he received the lists and gave instructions to employees of the Mark-Lally Company that if any representatives of concerns listed came to purchase goods, they were to be referred to him, and that it was the policy not to sell to those who were not operating under the American Plan (pp. 177-178).

Frank C. McDonald, general president of the State Buildings Trades Council of California, made an affidavit in which he stated that from June 1, 1922, until November 20, 1922, the Industrial Association mailed dealers in plumbing and steam-fitting supplies written lists containing the names of all contractors who were employing labor-union foremen or more than one-half of whose employees

were members of labor unions; that after November 20, 1922, the Industrial Association discontinued the practice of mailing said written lists, but conspired among its members and officers to furnish the names of all building contractors and master plumbers operating contrary to the rules of the Builders Exchange and arranged that the Industrial Relations Committee of the Builders Exchange should not grant any permits for any of the building materials under the permit system to any person who employed any plumbing contractor or Master plumber whose name was not on the new list (pp. 85, 86). Plumbing supplies were almost exclusively manufactured outside the State of California and shipped into the State by rail or water from other States (pp. 86, 454).

Paul Eliel also testified (p. 158):

The secondary supply houses were placed on the list to prevent plumbers who were operating on the union basis from obtaining supplies through these various secondary houses.

On page 23 of appellants' brief the statement is made:

The permit system never covered plumbing supplies.

It is enough to say in answer to this contention that the plan of the conspirators was to prevent, and in numerous cases did prevent, anyone who

refused to operate under the American Plan from getting plumbing supplies.

The American Radiator Company refused to sell C. Peterson a steam boiler and some radiators. H. W. Noble, manager for the company, testified that lists similar to Exhibits 22, 23, and 24 (p. 165) were seen by him; that they were opened by the mail clerk and placed on his desk; that he then turned them over to the assistant manager with instructions to confer with him if any of the parties named in the lists should apply for materials, as he wanted to give these applicants special treatment with the idea that before he would refuse any of those named on the lists he would look into it. Peterson's name appeared on these lists (p. 183).

The full significance of the plan is made clear by Exhibit No. 18 (pp. 140, 141) issued by the Industrial Association, which is in effect a "black list":

Industrial Association of San Francisco, Santa Fe Building.
Address all communications to the association

July 1, 1922.

The Builder's Exchange, 180-188 Jessie Street, San Francisco, Cal.

(Attention of Mr. Crawford)

Gentlemen: We hand you, herewith, list of jobs operating, in accordance with Mr. George's letter to you of June 29, copy of which was forwarded to Mr. Gross.

Sugarman Jobs

Contractor	Location
McCay-----	1190 Stanyan St.
-----	N. E. cor. 3rd Ave. and Irving

Contractor	Location
Higginson.....	21st Av. 150 ft. north of Clement
.....	N. E. Cor. of 3rd Ave. & Irving
Steinauer.....	N. side of Cal. 50 ft. W. of 10th Ave.
M. T. Johnson.....	W. side of 14th Ave. bet. B & C
Schwartz.....	N. side of Cal. bet. Gough & Octavia
Schwartz.....	McLaren Ave. bet. 29th & 30th
.....	232 30th Ave.
A. W. Lawson.....	N. W. cor. of 2nd and Geary
Sherer.....	Moss bet. Howard & Folsom
.....	232 30th Ave.
A. W. Lawson.....	N. W. cor. of 2nd & Geary
Sherer.....	Moss bet. Howard and Folsom
.....	S. side of Clement St. near 27th
E. Nelson.....	S. side of Valencia bet. Army & Duncan
.....	N. W. cor. of 1st Ave. & Balboa

Also the following job, which Mullins is doing for Jannesen:

Franklin & Union Streets.

We have the record of Hammerton's job, as below, Gus May, plumbing contractor:

East side of Funston Ave., 200 ft. N. of Fulton

We have the record of the following Hammill jobs; F. Kohler is the plumbing contractor in each instance:

W. side of 16th, 225 ft. N. of Balboa

S. side of Geary, west of 21st Ave.

N. side of Francisco, 87-1/2 E. of Gough

We also hand you list of the following jobs on which Kohler is operating. These have previously been supplied you, but in most instances without precise location.

Contractor	Location
Munson.....	E. side of Mission, 225 s. of 25th
Warden.....	S. side of Carmel, 208 E. of Cole
Warden.....	N. side of Alma, 176 e. of Stanyan
Midbust.....	N. side of 15th 264 n. of Balboa
Warden.....	E. side of 29th, 75 to 125 n. of Balboa
Sandberg.....	Corner 11th & Lake

Contractor	Location
Warden.....	5060 Mission St.
Warden.....	N. side of Chestnut, 109 w. of Van Ness
Warden.....	W. side of 15th Ave., 105 s. of Judah
Warden.....	W. side of 21st, 170 s. of California
Sandberg.....	W. side of 12th Ave. 75 ft. N. of Fulton

Also the following jobs on which Gus May is the plumber, most of which have previously been given you without the precise location:

Contractor	Location
Adler.....	19th Ave. 175 s. of Balboa
Moren.....	W. side of 12th Ave. bet. I & L
Adler.....	S. side of Anza 120 ft. E. of 22nd
.....	Railroad and Palou Ave.
McLean.....	W. side of 17th, 275 s. of C.
Gillogley.....	E. side of Prosper, 91 N. of 17th.
Irvine.....	W. side of 9th Ave. 200 N. of Fulton
Cohn.....	W. side of Franklin, 30 S. of Green
Jones.....	S. W. corner 27th and California
Ellingson.....	S. E. cor. California & 32nd
Johnson.....	N. E. cor. 11th and Judah

Very truly yours, Industrial Association
of San Francisco. Paul Eliel."

Industrial Association of San Francisco, Santa Fe Building.
Address all communications to the Association

June 17th, 1922.

Builders' Exchange, 180 Jessie Street,
San Francisco, Cal.

Attention Mr. Crawford

Gentlemen: Below please find additional list
of plumbing jobs, with contractors and
locations:

Albert I. Mollis:

East side of 12th Ave., South of Geary
West side of Edinburgh, 300 ft. east Elcelsior
Alteration job—108 Congo St. Sunnyside
N. E. Cor. Church St. near 28th—Alteration job

1000 Divisadero St.
 North side Taraval—200 West 34th St.
 108 Congo St.

E. Sugarman:

North side California St. bet. Gough & Octavia
 McLaren Ave., bet. 29 & 30th Ave. Seaclyff
 N. E. Cor. 3rd Ave. & Irving St.
 24 Leaven Ave.
 232 30th Ave.
 2nd Ave. & Geary
 1190 Stanyan St.
 3rd Ave. bet. Lincoln & Irving
 N. E. cor. 3rd Ave. & Irving
 21st Ave. bet. Clement & Cal.
 Santa Paula Ave. St. Francis Wood
 S. S. Clement St. near 27th Ave.
 California & 10th Ave.
 14th Ave. bet. B & C
 Moss St. bet. Howard & Folsom
 Valencia St. bet. Army & 29th Sts.
 1st Ave. & Balboa St.

Very truly yours, Industrial Association
 of San Francisco.

(Signed Paul Eliel PE. T. (pp. 142-3))

"For Sound Industrial Relation."

Industrial Association of San Francisco, Santa Fe Building.
 Address all communications to the Association

June 16, 1922.

The Builders' Exchange, 180 Jessie St., San
 Francisco, Calif.

(Attention of Mr. Crawford)

Gentlemen: We have the following list of
 plumbing jobs for which Mark Lally holds
 the orders. The master plumbers, in all
 instances, are on the list. You may find
 one or two duplications below, as compared

with the list which we have already given you. The list follows:

Kohler's Jobs

Location	Owner	Condition of job
17th & B	Simme.....	Ready to plaster.
W. 12 & N. Fulton	Sonberg.....	Ready to plaster.
16th & B	Hammill.....	Ready to plaster.
16th & A	Sonberg.....	Ready to plaster.
15th & B	Midbust.....	Ready to pour foundation
W. 21st & Cal	Warden.....	Ready to plaster.
2nd & Geary	Midbust.....	Ready to pour foundation.
29th & B	Warden.....	1 house, ready to plaster. 1 house, foundation only in. 1 house, ready to pour foundation.
27th & Lake	Hammill.....	Not started.
12th & Lake	Sonberg.....	Not started.
37th & Geary	Warden.....	Not started.

The following jobs of Kohler have not yet been inspected. We will inform you of their condition within a day or two.

Location	Owner
W. 21 & Geary	Hammill
W. 15 & Judah	Warden
25th & Mission	Munson
N. S. F. & E. of Gough	Unknown
N. Chestnut & W. Van Ness	Warden

"For Sound Industrial Relations"

Kohler Jobs (Contd.)

Location	Owner
Camel & Stanyan	Warden
Alma & Stanyan	Warden
5000 Mission St	Warden
Parkside	Warden

Gus May's Jobs

Location	Owner
W./s. 9 av., 200' N. of Fulton.....	Irvine, Contr.
13th Ave. & Fulton.....	Unknown
w/s. Franklin Street, South of Green....	L. J. Cohn, Contr.
Cor. 28th & Cal. T. M. Jones, Contr....	Unknown
Location unknown.....	Homenga
Location unknown.....	W. J. Irvine
12th & I.....	Unknown
Quesado & Newhall.....	Unknown
17th & Fulton.....	Unknown
23rd & C.....	Homenga
Ross Valley.....	Unknown
15th & Anza (near French).....	Unknown
Railroad & Palou.....	Unknown
5th & Anza.....	Konig
Upper Terrace.....	Unknown
19th & C.....	Adler
E. of 19th & N/s. Fulton, Mollé C.....	Unknown
Carl & Frederick.....	Unknown
Church & Helvig.....	Unknown
Liberty #242 Ellison, Contr.....	Unknown
11th Ave. & Judah.....	Unknown
Parkside.....	Maillard
N. of 17th & E./s. Prosper, Gillogley, Contr..	Unknown
E./s. 32nd & S. of Cal.....	Hammill
22nd & A.....	Adler

S. W. Bend Jobs

Location	Owner
N. E. cor. Fulsom & Dora.....	Unknown
Washington Street E. of Van Ness.....	Unknown
Haight & Pierce.....	Anderson

Peterson Company

Location	Owner
Geary & Shannon.....	Little
East side of Powell N. of Sacramento....	Anderson

Turner Company

Pipes and fittings for sprinkling jobs as follows:

Peck & Hulla, Oakland, Watson & Moore job.
Oakland, Albers Bros. Milling.

Very truly yours, Industrial
Association of California

(Signed) Paul Eliel PE/IA"

Similar lists are found at pages 145 to 150 of the record.

These letters of the Industrial Association were to call attention of Mr. Crawford as an employee of the Builders' Exchange to the specific jobs on which the plumbing was not being done on the American Plan (pp. 150-151).

After receiving the letter of W. H. George, dated June 29, 1922 (p. 142), Crawford discontinued permits to E. A. Janssen until he put his plumbing work on the American Plan. Witness issued a permit to Mr. Janssen while Mr. Mullins was still doing his plumbing, as Mr. Mullins adopted the American Plan. Crawford discontinued permits to Thomas Hammill on the particular jobs where May and Kohler were doing the work not according to the American Plan. Crawford held up permits on jobs where Sugarman was the plumber (p. 151). The S. W. Bend jobs mentioned in the letter of June 16, 1922 (p. 145), were included in the list in which S. W. Bend, master plumber, was not conforming to the American Plan (p. 152). Peterson Company were plumbing and steam fitting contractors and were included in the list (p. 145) because they were not operating on the American Plan (p. 152). The Turner Company were plumbers and steam fitters and electricians and at the time of the letter were not operating on the American Plan (p. 152). They were included in the list (p. 145).

The clause in the letter of June 29, 1922 (p. 142),
 please call to my attention any other jobs
 that should be added to this list which you
 take from your present records,

meant letters received from the Industrial Association calling the attention of Mr. Crawford to particular jobs. (P. 152.) Crawford would not issue materials (evidently refused to issue permits for materials) to Peterson, Higgins, and Mullins who were not running on the American Plan (p. 152).

7. Letters to Prospective Builders

The Industrial Relations Committee of the Builders Exchange adopted a plan of soliciting prospective builders to employ the American Plan contractors only. An example of this practice is Exhibit No. 10 (p. 122) and reads as follows:

Builders' Exchange, Incorporated July 5, 1890, 180-188
 Jessie Street. Phone, Sutter 6700.

SAN FRANCISCO, CAL., *April 17, 1922.*

CHARLES MURPHY,

3028 Broderick Street, City.

DEAR SIR: This committee notes that you have made application for building permit for a 2-story & basement frame (2 flats) at W. 9th Av. 125 N. California.

On behalf of the Builders' Exchange sincerely trust that you will only employ American Plan contractors on this work.

American Plan contractors in every craft you will find as members of the Builders' Exchange affiliated with their own craft.

If you desire a list of American Plan contractors in any of the crafts, we shall be glad to supply same on application.

Yours very truly,

BUILDERS' EXCHANGE OF
SAN FRANCISCO.

W. H. GEORGE,

*President and Chairman
Industrial Relations Committee.*

The treatment of an owner who did not comply with such request is shown in the affidavit of Ethel Lynn (pp. 66-70). Mrs. Lynn was engaged in a building operation in March, 1923, and employed Chris Salomonsen. He called on H. S. Thompson to buy material. He was refused. He then went to R. O'Connell, who said that he had two trucks idle and plenty of material on hand, but that he could not sell it to Mr. Salomonsen without a permit; that he was checked very closely on the material sold to him, and if he sold it without a permit the wholesale building material dealers would refuse to sell him any more material and would put him out of business. He then went to the Sibley Grading & Teaming Company, from whom he received a letter, of which the following is a copy (p. 70):

[Sibley Grading and Teaming Co., office and yard, 135
Landers Street]

SAN FRANCISCO, 3/19/23.

C. SALOMONSEN, 723 *Sanchez St.*

DEAR SIR: Before we can deliver any cement-lime or rock on your order for 3668

21st St. you will have to get permit from the Builders' Exchange and either bring same to us or have the Exchange mail it to us.

SIBLEY GRADING & TEAMING Co.,
By C. G. S.

This resulted in a visit of the owner to Mr. Crawford and the asking for a permit for twenty-five barrels of lime. Mr. Crawford said (p. 68):

I think you are going to have that material carted off and used on some union job. I will give you a permit for 5 barrels of lime. You can take it or leave it.

We find no contradiction of Mrs. Lynn's affidavit by any of the persons named therein.

8. Compelling Breaches of Contracts

The Builders Exchange was so intent upon controlling the entire building situation that they coerced contractors to break contracts with any person not operating under the American Plan and agreed to pay and did pay damages assessable and assessed against the general contract.

G. B. Pasqualetti was engaged in business as a general contractor in San Francisco (p. 312). He commenced a building in the early part of 1922 for G. Rossi & Company, and in March, 1922, entered into a contract with C. Peterson & Company for plumbing. Inspectors representing themselves as agents for the Industrial Association of San Francisco notified Pasqualetti that it would be necessary for him to cancel his contract because

C. Peterson & Company were not operating under the American Plan, and that he would not otherwise be able to obtain building materials for the building. Pasqualetti went to the headquarters of the Industrial Association, where he was requested to cancel his contract with Peterson & Company and advised that the Industrial Association would protect him from all loss if he would cancel said contract. Max Kuhl, attorney for the Association, drew up a contract of indemnity. Pasqualetti then notified Peterson & Company, canceling the contract. He was sued and his property attached. He was represented in the suit by Max Kuhl, according to the agreement of the Industrial Association. The attachment was released by bond furnished by the Industrial Association and the action was compromised by the payment of \$1,400, which was paid by the Industrial Association. The Association also paid the attorney's fees. He thereupon made a contract with A. J. Silva, who completed the job. Pasqualetti was a member of the Builders Exchange at the time of making the contract with Peterson & Company (p. 313). Somewhat similar experiences are detailed in the affidavit of W. K. Hughes (pp. 322-323).

C. The direct restraint upon interstate commerce which resulted from the combination between defendants

It was the purpose of the conspiracy to make it impossible for builders in San Francisco to obtain any building materials whether they came from

within or without the State of California without a permit from the Builders' Exchange. The permit system was extended to San Mateo, Santa Clara, Alameda, and Contra Costa Counties, as is evidenced by a general circular issued by the Industrial Relations Committee of the Builders' Exchange, dated December 18, 1922, as follows (p. 283):

It is with a great deal of pleasure as the old year draws to a close that I thank you on behalf of the San Francisco Builders' Exchange for the cooperation which you have given us in the maintaining of the permit system, the very necessary agency for maintaining the American Plan.

May I remind you at this time that the permit system is still in full effect for the counties of San Francisco, San Mateo, Santa Clara, and Alameda.

That you must insist on having in your office a permit for all deliveries in these counties, made either to dealers or contractors, on the following building materials.

Cement, Lime, Plaster, Ready Mixed Mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

On May 18, 1923, another general circular letter was issued, a copy of which is as follows (p. 286):

[The Builders' Exchange, 180-188 Jessie Street]

SAN FRANCISCO, CAL., *May 18, 1923.*

GEO. P. SCHWAAB, Esq.,

Hotel Stewart, San Francisco, Calif.

GENTLEMEN: As announced to you in President's Letter No. 5, the permit system was found "not guilty" in our Superior Court and is in full force and effect. The purpose of this letter is to remind you that the permit system covers cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath, and metal lath of all kinds, wood lath, Keene's cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

Also that it is in effect for the counties of San Francisco, San Mateo, Santa Clara, Alameda, and the city of Richmond.

Manufacturers must require San Francisco Builders' Exchange permits from all dealers to whom they ship in the above-mentioned territories, except that permits issued to dealers for Alameda County and the city of Richmond by the Oakland Builders' Exchange will be satisfactory.

All dealers receiving goods under these dealer permits mentioned above must have on file in their office a permit before they make any deliveries to any consumer or other dealer.

Auditor's checking will be intensified at once, and it will be necessary to prefer charges against anybody not strictly complying with the above instructions.

We earnestly plead with you to cooperate with this committee so that the permit system may become absolutely effective for the carrying out of the American Plan in the building industry, and it is sincerely hoped that it will not be necessary to prefer charges against any one for dereliction of duty.

Keep "fine" money in your pocket.

Yours very truly,

(Signed) W. H. GEORGE, *Chairman,*
Industrial Relations Committee.

The counties of San Mateo, Santa Clara, Alameda, and Contra Costa lie south or immediately east of San Francisco.

The defendants proposed to see that no building materials could be obtained by any contractor or builder within the above-mentioned territory who failed or refused to adopt and adhere to the American Plan. The agreement and understanding of the defendants was to extend the permit system so as to prevent building materials of all kinds, destined for the counties of San Francisco, San Mateo, Alameda, Contra Costa, and Santa Clara, from being sold or delivered to any person desiring to use such materials in any building operations, whether in carload or less than carload lots, unless before such sale or delivery a permit was secured and a pledge card signed and filed with the Builders' Exchange of San Francisco.

The defendant William H. George was the leader in the conspiracy. He was the president of the Builders' Exchange and chairman of its Industrial Relations Committee. He was also manager of the Henry Cowell Lime and Cement Company which dealt in the products mentioned in the first permit resolution of April 12, 1922 (pp. 270, 299, 122).

On April 12, 1922, the defendant W. H. George, as chairman of the Industrial Relations Committee of the Builders' Exchange, issued letters containing the following statement (p. 137):

If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to *all other materials used in the building trades*.

Your whole-hearted cooperation is necessary, will be appreciated, and will soon end the present controversy.

On April 15, 1922, he wrote in part as follows (p. 111):

It is called to the attention of the committee that your shop is still running on the union basis. On receipt of this letter will you immediately correct this situation? On common with all master plumbers, *your business must be run on the American Plan*.

On June 7, 1922, he issued another letter from which we quote (p. 138):

Be sure you have on hand a permit for every delivery or *carload shipment*.

On June 30, 1922, he wrote in part as follows (p. 139):

It is now necessary to add to the permit system * * *. Kindly be governed accordingly and see that you have a permit on hand for all L. C. L. as well as *carload deliveries*.

In both letters, dated June 7 and June 30, 1922, specific attention was called to the necessity for a permit for "carload deliveries." In the last letter, of June 30, wire lath and metal lath of all kinds were added to the list, neither of which were manufactured in the State of California (p. 454).

It is apparent from these communications that the scope of the conspiracy was such that it necessarily affected interstate commerce. In order to illustrate the extent of the conspiracy to prevent any contractor from obtaining building materials from sources of supply wholly outside of the State of California and to prevent anyone except adherents of the American Plan from obtaining such supplies, it is proper to direct attention to the testimony of a number of witnesses who were interfered with in obtaining interstate shipments and to trace the responsibility for such interference to the defendant conspirators. Corroboration of these witnesses by documentary evidence will also be pointed out. For convenience the testimony will be separated according to the material attempted to be purchased, under headings, plaster, cement, lime, and plumbing supplies.

1. Plaster

There were five boss plasterers interested in the Golden Gate Building Materials Company, sometimes referred to in correspondence as the G. G. B. M. Company (p. 460). These plasterers were known as the "Big Five" (pp. 332, 335). The members who constituted this group were Francis O'Reilly, J. E. Connell, McGruer and Simpson, Peter Bradley, and A. Knowles (p. 321). They each had difficulty in carrying on building contracts and purchasing building materials and organized the Golden Gate Building Materials Company for the purpose of purchasing in the best manner possible plaster and other building materials necessary in carrying on their operations in San Francisco (pp. 321-322).

Not more than 1 per cent of the plaster used in building operations in the city and county of San Francisco was produced and made in the State of California. Most of it was manufactured in the States of Nevada, Utah, Montana, and Washington (p. 320.)

A. Knowles was a plastering contractor who had performed contracts on a number of large buildings in San Francisco, including the Golden Gate Theater and Loew's Warfield Theater. While working on these theaters he was notified by William H. George, president of the Builders' Exchange, that he must immediately adopt the American Plan, discharge the union plasterers employed

by him who would not abide by the American Plan; and that if he failed to do so, he could not obtain plaster from any member of the Exchange or the Industrial Association. He was notified by Mr. George that—

every effort would be used to prevent him from getting plaster in order to carry out said contracts on the aforesaid theaters (p. 321).

He requested that he be allowed to finish the contracts on the theaters with the men then in his employ and pledge himself to abide by the American Plan thereafter. President George refused such request (p. 321).

Montana.—In April, 1922, the Golden Gate Building Materials Company, with which Knowles was identified, ordered plaster from the Three Forks Portland Cement Company, at Hanover, Mont., to be shipped by rail to Portland, Oreg.; thence by ship to San Francisco. Shortly after making an agreement with the Three Forks Portland Cement Company the Golden Gate Building Materials Company was notified by the McCormick Steamship Company of an increase in freight and was advised by Mr. McCormick of the Steamship Company that such increase in rates was necessary for the reason that the Golden Gate Company was not a member of the Builders' Exchange, and that if such steamship company transported said building materials for and to the said Golden Gate Building Materials Company the steamship

company would lose transportation business of certain business concerns who were in sympathy with the enforcement of what is known as the American Plan in San Francisco. Shortly thereafter the Golden Gate Building Materials Company was notified by the Three Forks Portland Cement Company that it could not fill said order (p. 320). Two officials of the McCormick Steamship Company testified for defendants on this subject (p. 463, 468, 469). There is no denial in the record that the Three Forks Portland Cement Company refused to fill said order. (App. brief, pp. 107-108.)

Nevada.—While Knowles was doing the plastering on Loew's and the Golden Gate Theaters in 1922 he placed orders for hard wall cement with the Pacific Portland Cement Company, which had its manufacturing establishment at Mound House, Nev. Orders were on *carload lots* and were delivered to Knowles in carload lots. During the year 1922, after having received several cars of plaster from the Pacific Portland Cement Company, Knowles was notified by the company that another car had arrived but that before delivery of said car of plaster could be made, it would be necessary for Knowles to obtain a permit from the Builders' Exchange of San Francisco. He was notified that because he had not obtained the permit the car of plaster could not and would not be delivered to him. He did not receive that car of plaster, and ever since that time he has been unable to obtain from the Pacific Portland Cement Com-

pany any plaster for use in San Francisco, San Mateo, Santa Clara, and Alameda Counties (p. 311). The Pacific Portland Cement Company refused to sell building material to the Golden Gate Building Materials Company in 1923 (p. 322). This subject matter is discussed in appellants' brief, pages 106, 107.

The assistant secretary of the Pacific Portland Cement Company, Mr. Henry V. Towle, testified that the company manufactures its plaster in its own plant at Mound House, Nev., and (p. 470)—

the customary way of handling its plaster in San Francisco is for said cement company to ship it from Mound House to itself in the city of San Francisco, where the cars are unloaded and the plaster put in warehouses of said cement company. Only in exceptional cases of an extremely large building is this practice ever departed from and goods shipped direct to a job.

He testified further that during the early part of 1922 various carloads of plaster were shipped from its plant in Nevada to its warehouse in San Francisco, consigned to itself; that from time to time they notified Knowles of the arrival of certain carloads of plaster, and in accordance with this information Knowles from time to time placed certain orders for plaster. At no time has said cement company ever shipped any carloads of plaster from its plant in Nevada to Knowles in San Francisco (p. 470).

The extravagant effort of the defendants to show that interstate commerce was not involved is shown by this testimony. When carloads of plaster were shipped from Nevada to San Francisco for one job, why should the cars be unloaded and the plaster put in warehouses unless for the purpose of raising the technical point that the contents of the cars had been severed from interstate commerce? (App. brief, p. 28.) It is practically admitted in this testimony that certain carloads of plaster went from the plant of the Pacific Portland Cement Company in Nevada, consigned to itself in San Francisco, and without being unloaded were delivered to Knowles. The practice and purpose of the Pacific Portland Cement Company is shown by other witnesses. Gordon Chamberlain, doing business as the "Civic Center Supply Company," was refused plaster because he did not and could not obtain a permit from the Builders Exchange of San Francisco (p. 296). Z. T. Thorning, secretary of the Gray, Thorning Lumber Company, placed an order for one car of Empire plaster with the Pacific Portland Cement Company, and Mr. Knox, manager of the Pacific Portland Cement Company, advised him it was impossible for the company to ship from Nevada to the Gray, Thorning Lumber Company unless the Gray, Thorning Company first obtained from the Builders Exchange a permit. The Gray, Thorning Company did not obtain a permit because it was necessary to subscribe to a pledge that it would sell hardwall plaster only to those

who agreed to support the American Plan or to those who had obtained a permit from the Builders Exchange (p. 317).

N. H. McLean and A. J. Mooney visited the office of the Pacific Portland Cement Company in San Francisco, where they were informed that the company owned the plant at Mound House, Nev.; that Empire plaster was their product, and that the company would sell them plaster provided they had a permit from the Builders Exchange *but under no other circumstances* (p. 76).

Fred Figel, an agent for the Pacific Portland Cement Company, was asked by J. F. Cambiano, on June 27, 1922, to sell him 40 tons of Empire plaster and tendered in payment \$1,000. Figel stated that under instructions from the Pacific Portland Cement Company he could not and would not sell any plaster to Cambiano or to any union man or to any person without a permit because and by reason of an understanding and agreement entered into by and between the Industrial Association and his company and other dealers in and manufacturers of plaster. Figel said that he was acting under express orders and directions received by him from the Pacific Portland Cement Company and that he had gone to Watsonville, Calif., and stopped the delivery of a carload of cement sold by the Pacific Portland Cement Company to the Pajaro Valley Mercantile Company and had caused the money which had been paid for the said cement to be returned to the purchaser, and that he had done this

because he had been informed and believed that the said cement was intended for union workers, which was contrary to the agreement and understanding which had been entered into by the Pacific Portland Cement Company with the other building material dealers and manufacturers of cement, plaster, and similar materials (p. 77).

Nevada.—On February 27, 1923, a contract was entered into between the Golden Gate Building Materials Company and the Standard Gypsum Company, which manufactured plaster at Ludwig, Nev., for 500 tons of plaster to be delivered as requested. The contract is found at page 326 of the record. The Standard Gypsum Company delivered 370 tons in accordance with that contract. On June 25, 1923, O. C. Barrymore, sales manager for the Golden Gate Building Materials Company, was informed by President Udahl, of the Standard Gypsum Company, that the company would not finish and fulfill the contract and that it would pay any damages resulting from its failure to fulfill its contract, and gave as a reason for the refusal that dealers in said product in the San Joaquin County would not buy from the Standard Gypsum Company because it was selling to the Golden Gate Building Materials Company, knowing that it was not a member of the Builders Exchange and had no permit for said plaster (p. 327). The application of the Golden Gate Building Materials Company was rejected by the Builders Exchange in May, 1923 (p. 326). It appealed for a permit on

August 15, 1923, and was refused (p. 327). This action was commenced in the United States District Court May 26, 1923. (Discussed in appellants' brief, pp. 105-106.)

Utah.—James A. Gray, a union representative, was connected with the Building Trades Material Supply Company, organized for the purpose of furnishing building materials to contractors and other persons who were unable to obtain hardwall plaster because of the combination between the Builders Exchange and the Industrial Association. In May, 1921, Gray went to Richfield, Utah, to interview W. P. Payne, sr., the manager of the Jumbo Plaster Company, whose plant was at Sigurd, Utah. Payne stated that the output of the plant had formerly been handled in San Francisco by the Henry Cowell Lime & Cement Company, of which W. H. George was manager. Eighteen carloads of plaster were ordered and the money deposited in the Salt Lake City bank to pay for it. Orders were placed in 1922 and funds to cover 4 carloads were placed in the Peterson Bank at Richfield, Utah. Eighteen carloads were shipped during 1921 from the plant in Utah to the Harbor warehouse in San Francisco. As soon as the plaster began to arrive in San Francisco, the Builders Exchange placed all the Jumbo Plaster Company products on the "unfair list" and posted a notice to that effect in the assembly room of the Builders Exchange, and thereafter members of the Builders

Exchange boycotted the Jumbo brand of plaster and refused to purchase any products of the Jumbo Plaster Company (pp. 299-300). On April 20, 1922, Gray wired Payne that he was in need of large quantities of plaster and asked if they could make prompt shipments. On April 21, 1922, he received a reply (p. 300):

Can fill your orders at \$8 per ton f. o. b. Sigurd. Sacks extra. Jumbo Plaster Company.

On April 29, 1922, he received a telegram signed Jumbo Plaster Company, as follows (p. 300):

Will load car Monday San Jose. Please advise A. Knowles that we can load cars for him Tuesday.

On May 1, 1922, he received a telegram (p. 300):

We are prepared to make prompt shipment. Send in all orders you can. Jumbo Plaster Company.

On June 29, 1922, Gray telegraphed (p. 300):

Deposited Tuesday with Petersons Bank eleven hundred and four dollars for another hundred twenty tons plaster. Have you shipped last car of previous order. How soon will you ship on this order. * * *

On July 1, 1922, Gray received the following telegram (p. 300):

Have not shipped last car on previous order. Can not promise shipment until after fourth.

Gray had an interview with Mr. Payne in San Francisco on July 2 and 3, 1923, during which Payne stated that he could have sold several hundred carloads of plaster in San Francisco, but with the orders that Gray would be able to supply him he was not going to seek any further trade there. Gray received no more plaster from the Jumbo Plaster Company. He wrote Payne and received a reply from him advising Gray to withdraw his funds from the Peterson Bank and that owing to conditions at their plant they would be unable to make any further shipments for some time. Gray learned that Payne had shipped five carloads of plaster to the Cowell Lime & Cement Company, at San Jose, Calif., at about that time (p. 301.) Mr. Payne testified that he had notified Gray that he might draw down his deposit—

as I could not make deliveries to him (p. 269).

After receiving the order for 20 tons he met W. H. George, president of the Builder's Exchange of San Francisco. It was after he had spoken to Mr. George that the order was turned down (p. 269). Payne testified (p. 272):

I shipped certain lime or plaster to Gray. There was an order for 20 tons placed with us and the money deposited. Some of that order we did not fill. The reason we did not fill it was because of conditions at the plant. We had three conditions there that put us to the bad. The first one was a flood;

the second one was our calcine kettle; the third one was that our turbine wheel went back on us. * * * When these conditions were alleviated and our plant was running normally, we made arrangements with the Henry Cowell Lime Company to act as distributors, and having made that arrangement we declined or failed to fill that order because of the new condition of having a distributor here on the ground. * * *

I have received a number of letters since July, 1922, requesting that we fill orders or accept orders in and around San Francisco. I have referred them to the Henry Cowell Lime & Cement Company as being our distributors. That is the only reply I have given to any of them.

He testified that the flood damage was cleared up on July 19, 1922, and that he was in San Francisco on June 30 or July 1, saw Mr. Gray and also saw Mr. George. During the month of July he sent 1 car of plaster to Alexander Gray. He said (p. 271):

It was in that month I told Alexander Gray that he might as well draw down his deposit—that I would not be able to fill his order.

He also said (p. 271):

In conversation with Mr. George, the permit system of the Builders' Exchange was just merely mentioned. That is a matter I did not enter into and do not care anything about. I do not know in what connection he mentioned it. He merely said they were under a permit condition here.

Utah.—Z. T. Thorning, of the Gray, Thorning Lumber Company, also placed an order for 2 carloads of hard-wall cement with the Jumbo Plaster Company in 1922. These two carloads were shipped from Sigurd, Utah, to the Gray, Thorning Lumber Company at Redwood City, Calif. Mr. W. P. Payne, sr., manager of the Jumbo Plaster Company, refused to accept any further orders because the Gray, Thorning Lumber Company had not obtained a permit from the San Francisco Builders Exchange, but gave as a reason for its refusal a partial destruction of its plant. It did ship 5 cars to the Henry Cowell Lime and Cement Company within six weeks (p. 317). On July 21, 1922, Mr. Payne, manager of the Jumbo Plaster Company, wrote Gray, Thorning Lumber Company, acknowledging receipt of check for \$439.60 and placing an order for 40 tons of fibered hard wall, saying also (p. 274):

date of shipment to you is very indefinite.

On July 21, 1922, the Jumbo Plaster Company gave credit memorandum to Gray, Thorning Lumber Company for \$440 (p. 274). On August 4, 1922, the Jumbo Plaster Company wrote Gray, Thorning Lumber Company (p. 274):

We have your letter of July 31st and assure you we were pleased to receive same but regret to say that owing to the fact that one of our calcining kettles went bad and had to be replaced and owing to the increased Utah and Idaho orders we have on file and

being behind on account of this kettle delay
*it will be a long time before we will be able
 to ship to you.*

On September 27, 1922, the Jumbo Plaster Company advised the Gray, Thorning Lumber Company (p. 275):

I do not think it would be advisable to depend upon us for any plaster.

With reference to handling its business between Utah and California, Mr. Payne testified (p. 272):

In shipping our goods to the Henry Cowell Lime & Cement Co., I follow out their instructions whether the goods go to them direct or send it to their customers. Whatever their shipping directions are, we follow them. It is sometimes shipped out direct and sometimes it is shipped to their customers.

2. Cement

Kansas.—The method used by defendants to coerce unwilling dealers and contractors to submit to the will of the conspirators is illustrated by the correspondence between Best Brothers Keene Cement Company of Medicine Lodge, Kans., and the Steffens Lomax Company, its factory representative on the Pacific coast. Before reading this correspondence, however, it is important to read a letter of W. H. George, on the letterhead of the Henry Cowell Lime & Cement Company, dated April 19, 1923, directed to the attention of Mr. Thomas Best (pp. 387-388) in which he says:

I find considerable protest here from our recognized dealers and fear that your tonnage is not going to be well taken care of here if you are going to ship contractors and unrecognized building supply dealers. The recognized dealers feel that it is not fair for you to be shipping contractors like MacGruer & Simpson. In other words, if you want the contractor trade direct how can you expect the recognized dealer trade?

Also in regard to the Golden Gate Building Material Company. I explained to you the situation when you were here that this outfit was the bootlegging outfit for the union plasterers and they are still at the same game, and the recognized dealers are not going to be in favor of handling material which is also handled through this unrecognized outfit who are not members of the Builders' Exchange and who will not be accepted. Of course, MacGruer & Simpson get a big job once in a while, and are only buying from you because at present they can not buy from anybody else.

The correspondence upon this subject is found as follows:

Letter from Thomas Best to the John R. Steffens-Lomax Company, April 26, 1923 (p. 328).

Reply, May 1, 1923 (pp. 337-338).

Letter of Best to Steffens, May 7, 1923 (p. 330).

Reply, May 18, 1923 (pp. 338-340).

Letter, Best to Steffens, May 22, 1923 (pp. 331-335).

Reply, June 5, 1923 (pp. 340-341).

Letter, Best to Steffens, June 11, 1923 (pp. 335-337).

Reply, June 21, 1923 (pp. 342-343).

This correspondence deals with a form of plaster known as "Keene cement." The Keene Company was dealing with the so-called "Big Five" and the Golden Gate Building Material Company and were shipping large orders to MacGruer & Simpson (pp. 331-332). On May 22, 1913, Mr. Best wrote his agent (p. 331):

We have shipped today to MacGruer & Simpson their order No. 937 and expect a car any day for loading the second fifty-ton shipment to apply on their order No. 938, balance of orders to be shipped as instructed later. We presume that MacGruer & Simpson or yourselves will give us sufficient notice when needing additional shipments so that we can secure *large capacity cars* in time to enable shipments to be made to take care of their requirements.

He says further (p. 331):

nor do we understand why it is necessary to obtain permits from the Builders' Exchange for release of building materials as this is something new to us. We would be glad of your further explanation as to why it seems to be the practice in San Francisco before placing orders for building materials to obtain permits or consent from the Builders' Exchange to purchase building materials by members of the Exchange.

In the same letter he says (pp. 333, 334) :

As advised you by previous correspondence, we have had several letters from Mr. W. H. George of the Henry Cowell Lime & Cement Co. commencing with his letter of April 19th raising objections to our selling direct to MacGruer & Simpson and especially to the G. G. B. M. Co., claiming that recognized building supply dealers would not be favorable to the handling of our Keene's cement so long as we continued the practice, and asking us to discontinue making shipments to the concerns in question." * * *

Mr. George in reply to our letter accepting his complaint wrote us on May 2nd that Mr. Cadman had just called him up protesting against the very thing that he had written us about; namely, our selling to MacGruer & Simpson and the G. G. B. M. Co. and again asking us to discontinue furnishing this firm any more material. We replied to Mr. George's letter of May 2nd that we had decided to discontinue shipments to the G. G. B. M. Co. (doing so on advice of your letter of May 1st) but that we would not refuse to accept orders or discontinue shipments to MacGruer & Simpson.

Mr. George wrote us on May 11th in reply to our last communication saying that our decision in regard to the G. G. B. M. Co. was correct and satisfactory but until we would take the same course with MacGruer & Simpson his firm and other dealers in San Francisco would not be favorable to our

material, further stating that he positively knew that MacGruer & Simpson were not boosters for lime mortar gauged with Keene's cement but are and always have been hard wall plaster advocates.

In commenting upon Mr. George's letter later, Mr. Lomax said (p. 341):

We are enclosing several letters from the Builders Exchange—from our files—which go rather fully into the matter, all being signed by our friend, Mr. W. H. George, of Henry Cowell Lime & Cement Co. Enthusiasts of Mr. George's caliber have the failing that their enthusiasm sometimes oversteps their adherence to veracity.

He then comments upon the value of Mr. George's assertion that MacGruer & Simpson were not pushing Keene's cement.

The direct effect upon eastern manufacturers of this combination to prevent contractors from getting building materials is illustrated by the following sentence of Mr. Best's letter of May 22, 1923 (p. 335):

If you can advise us we would be glad to have you do so as to the attitude of some of the principal architects and general building contractors in San Francisco with reference to the open shop or American Plan and whether there would be any danger of antagonizing architects or general building contractors by our selling direct to MacGruer & Simpson of the G. G. B. M. Co. We realize that if our methods of market-

ing our material in San Francisco were contrary to the opinion of architects and general contractors this might be a disadvantage that we would be placed under, therefore we should be glad if you would enlighten us on this point.

In a letter dated June 11, 1923 (two weeks after the Government commenced this action), to the Steffens-Lomax Company, Mr. Best said (p. 336):

We are very glad indeed that you have written us so fully with regard to this industrial Relations Committee. We gather from your information that the G. G. B. M. Co. have now been admitted as members in good standing of the Builders' Exchange and that therefore there will be no question as to their being in the same position as other building supply dealers and entitled to buy their materials direct from manufacturers the same as other building supply dealers in your city. If we are right in this opinion we are very glad indeed to hear of the embargo against the G. G. B. M. Co. being removed and we shall be glad to make shipments to them, our doing so not interfering in any manner and being quite regular.

As we now understand the situation in San Francisco, both the G. G. B. M. Co. and MacGruer & Simpson being members of the Builders' Exchange, it is therefore quite in order for us to accept orders from and make shipments to both of these firms and our doing so can not be considered irregular.

Notwithstanding the assumption of Mr. Best, the appeal of the Golden Gate Building Material Company for a permit for cement from the Builders' Exchange of San Francisco on or about August 15, 1923, was refused (p. 327).

Ohio.—The Sandusky Cement Company, with its office in Cleveland, Ohio, and its plants in Ohio, Illinois, and Pennsylvania (p. 295), had a distributing agent on the Pacific coast, namely, George P. Schwaab. Clinton B. Rogers was the general sales manager. Correspondence between W. H. George, Industrial Association of Santa Clara County and George P. Schwaab from October 28, 1922, to November 14, 1922, is as follows:

Telegram from W. H. George to George P. Schwaab, October 28, 1922 (p. 293).

Telegram from Schwaab to George, October 30, 1922 (p. 293).

Letter, dated November 10, 1922, from George to the Industrial Association of Santa Clara County (p. 293).

Letter, dated November 14, 1922, from Schwaab to Mr. George (p. 294).

Letter, dated November 14, 1922, from Edwards, secretary of the Industrial Association of Santa Clara County, to Mr. George (p. 294).

Letter, dated November 15, 1922, from George to Schwaab (pp. 294-295).

This correspondence involved a car of Medusa cement. In a postscript of his letter dated November 10, 1922, Mr. George says (p. 293):

Since writing the above I find out that this was a car shipped to J. Praeder at Redwood City, and was by him reshipped to San Jose. Can you advise me who J. Praeder of Redwood City is? This is rather important as we don't want a repetition, and I must get after the Sandusky Cement Co. WHG-b.

(Actually shipped without permit to Gray Thorning Co.)

Mr. Schwaab's letter of November 14, 1922, to Mr. George contains the following (p. 294):

The only shipment we made to Redwood City went to a dealer, the Gray, Thorning Lumber Company.

As you know, we are disposed to give you our heartiest cooperation and our product will not be distributed otherwise with our knowledge or consent. When I was at the Exchange last I made inquiry as to the *ineligibles* and was informed the Civic Center was the only one, and no shipments have gone to them since our talk on the subject. If any others are irregular I have not been advised. You can rest assured it is our desire to assist in every way possible.

The care with which every carload of cement was followed up by the Builders Exchange is shown in telegrams and letters between the Sandusky Cement Company, George P. Schwaab, and the salesmen's reports (pp. 345-348). These show that the Gray, Thorning Lumber Company of Redwood City bought white Medusa cement on August 30, 1922; telegram ordering it was sent September 1,

1922 (pp. 345, 346) ; that another car was sold November 28, 1922, upon the salesman's report, of which Mr. Schwaab made the following statement (p. 348) :

This concern shipped a car of " Medusa " to the unions at San Jose in violation of the Exchange rulings. They now have a car of our cement en route and I have Mr. Gray's promise that he will not disturb any further.

This concern is not in sympathy with the permit system and are considered " bootleggers." Please do not accept any more business from them without consulting me.

The Gray, Thorning Lumber Company was located at Redwood City, in San Mateo County, which is south of San Francisco and within the territory covered by the permit system.

On July 25, 1922, W. H. George, as chairman of the Industrial Relations Committee of the Builders Exchange, had written the Sandusky Cement Company as follows (p. 379) :

SANDUSKY CEMENT Co.,

*c/o Geo. P. Schwaab, Stewart Hotel,
San Francisco, Calif.:*

JULY 25, 1922.

GENTLEMEN: I want to take this opportunity to thank you as a building material dealer of this city for the faithful way in which you have observed the permit system for the counties of San Francisco, San Mateo, and Santa Clara.

It is very encouraging to be able to advise you that the Industrial Association of Santa

Clara County advises today that the union warehouse at this time is empty of materials and that union contractors are fast coming over to the American Plan.

Also to advise you that in this city bootlegging has almost entirely ceased.

May I again at this time ask you to redouble your efforts at this particular moment to see that a permit is exacted for every delivery, *carloads or less than carloads*? I feel sure that the closest adherence to this matter at this time for a short time longer will entirely clean up the situation.

Thanking you for your continued cooperation, remain

Yours very truly,

W. H. GEORGE,

Chairman Industrial Relations Committee.

WHG-b.

The purpose of the conspiracy, so far as it affected the shipment of cement by the Sandusky Cement Company from Ohio to California, is disclosed by the affidavit of Clinton B. Rogers and documents attached to that affidavit (pp. 343-387, inclusive), covering a period of time from April 9, 1922 (p. 374), to September 11, 1923 (p. 370). It was made clear to G. L. Brown, the salesman of the Sandusky Cement Company, in an interview with Mr. W. H. George, chairman of the Industrial Relations Committee, that the following dealers were blacklisted (p. 386):

Golden Gate Building Materials Company.

Civic Center Supply Company.

Gray, Thorning Lumber Company.

The letter of salesman Schwaab to the sales manager at Cleveland, Ohio, dated April 20, 1923, also made this clear (pp. 384-385) :

I note your remarks regarding the Permit System in the San Francisco Bay District. As far as I know, I have had all the Exchange circulars and have made it a point to forward copies to our office promptly.

I am attaching one dated August 4, 1922, copy of which was mailed our Cleveland office. You will note the system is in effect in the counties of San Francisco, San Mateo, Santa Clara, and Alameda.

I do not see any ground for worry over the subject of permits. The only outlaws are the Civic Center Supply Co., the Gray-Thorning Lumber Co., and the Golden Gate Materials Co.

The letter of August 4, 1922, referred to above, was sent by W. H. George as chairman of the Industrial Relations Committee, to the Sandusky Cement Company at Cleveland, Ohio, in which he stated (p. 380) :

please be sure that you have on hand a permit for every delivery, either carload or less than carload and to either dealer or consumer.

Considerable telegraphing was necessary in reference to shipments of carloads of cement to the Gray, Thorning Lumber Company in May, 1923 (pp. 372, 373). The result is shown in the telegram of May 11, 1923, from Schwaab to the cement company at Cleveland, as follows (p. 373) :

I informed Gray we would not ship without permit. The Exchange will not issue any to them at present. Do not ship. It is my understanding you desire to cooperate with Exchange. If so, only action we can take.

The regular course of business between the Sandusky Cement Company and the Gray, Thorning Lumber Company is illustrated by the letter of August 30, 1922, wherein the Sandusky Cement Company quoted the Gray, Thorning Lumber Company, Redwood City, Calif., on Medusa Products delivered f. o. b. cars, Redwood City, Calif. (p. 367). The effect of the conspiracy is shown by the letter from the company to its sales representative in San Francisco, dated May 11, 1923, in which it is stated (p. 363):

we understand that the Gray, Thorning Company are classed by the San Francisco Builders' Exchange as "bootleggers"; therefore, instructions have been issued in this office not to quote them, ship them, or have anything to do with them without specific instructions from you.

In order to show more clearly the interstate character of the business between this company and its customers in California, we quote from the same letter dated July 11, 1923 (p. 360) as follows:

You realize, of course, that the Sandusky Cement Company markets its products direct to the various dealers in the State of California. Our competitor's product is han-

dled through a jobber or on a jobbing basis in San Francisco. It is, therefore, unnecessary for that manufacturer direct to secure permits. This difference in the method of marketing places us in a somewhat handicapped position.

The purpose of the conspirators was exactly the same after suit was brought, as evidenced by the foregoing letter of July 11, 1923, as it was before, when on May 8, 1923, the Sandusky Cement Company telegraphed its California agent (p. 361):

This office will not request permit. Suggest you phone Gray Thorning price requesting the accompany order if placed with permit. Do not promise immediate shipment.

The dispute growing out of the effort of the Gray, Thorning Lumber Company to purchase Medusa white cement from the Sandusky Cement Company in May, 1923, is clearly evidenced by the letter of May 11, 1923 (pp. 363-365), May 15, 1923 (p. 351), and May 23, 1923 (p. 352).

Note the very frank comment from the California salesman, Schwaab, on May 15, 1923 (p. 351).

The Civic Center Supply Company, through Gordon Chamberlain, ordered 200 barrels of white Medusa Cement from the Sandusky Cement Company in September, 1922 (p. 295). He was a member of the Builders Exchange until May, 1922, when charges were preferred against him for selling without permits and he was fined \$250 (p.

296). On September 19, 1922, he received the following letter, which is self-explanatory (p. 296):

[Sandusky Cement Company, 626 Engineers Building, Cleveland, Ohio]

SEPTEMBER 19TH, 1922.

The CIVIC CENTER SUPPLY Co.,

San Francisco, Calif.

GENTLEMEN: Referring to your recent telegram requesting us to ship you 200 barrels of Medusa white cement, wish to advise that we are unable to make shipment of this order for reasons with which you are no doubt familiar.

Trusting it may be possible for us to take care of your business at some future date, we beg to remain

Yours very truly,

THE SANDUSKY

CEMENT COMPANY,

(Signed) C. B. KAYSER.

CBK: S.

The Sandusky Cement case is discussed in Appellants' brief, pages 102-104.

J. F. Cambiano, secretary of the Building Trades Council of Santa Clara County, purchased 2 carloads of cement from Thomas W. Simmons on May 22, 1922. Cambiano met Simmons in the Palace Hotel in San Francisco (p. 47). Simmons stated that on the preceding Friday he had been in San Jose (in Santa Clara County) to meet Max Kuhl; that he there met Samuel Tompkins and two other officials of the Industrial Association of Santa Clara County; that Tompkins acted under

advice of Max Kuhl, that he must notify Simmons that he must secure the return of the two carloads of cement sold to Cambiano. Cambiano, however, refused to return the cement (p. 48). Simmons stated that he had been advised that his business would be ruined if he continued to carry on any business relations with union-labor people in Santa Clara County; that he had been told by several customers that they could not deal with him if he continued in these relations; that he had been informed that his present banking facilities would be curtailed and stopped; that if he would refrain from obtaining any more cement for the unions and would cancel this order, certain business and financial associations in San Francisco would restore him to their favor and reestablish him in their business confidence.

3. Lime

Washington State.—The Tacoma and Roche Harbor Lime Company was ordered to appear before the grievance committee of the Builders' Exchange on January 25, 1923, for trial. It was charged with shipping a carload of lime to Mr. Cambiano at San Jose without a permit (p. 292). The effect of the trial is shown by the fact that in February, 1923, Gordon Chamberlain, operating under the name of the Civic Center Supply Company, tried to purchase lime from the Tacoma and Roche Harbor Lime Company. On February 21, 1923, the president of the company sold the Civic

Center Supply Company 250 barrels of lime, and instructed its agent, Mr. Reveal, to deliver this lime to the Civic Center Supply Company (p. 297). However, Mr. Reveal, instead of obeying the directions of his principal, took the lime off the boat, loaded it onto cars to be shipped out of town. When the Civic Center Supply Company asked Mr. Reveal for the lime, he said that he could not ship it; that if he did so it would mean that he would lose the sale of 2,500 or 3,000 barrels of lime to members of the Exchange who were in a position to buy lime from him under the permit system, and that under the circumstances existing at that time he could not let them have the lime (p. 298). In this connection it is interesting to read the affidavit of Mr. W. C. Reveal (pp. 466-467) attempting to give some excuse for the failure to obey his principal in reference to the delivery of this lime, as well as his affidavit at pages 313, 314.

Evidently Mr. Reveal was informed by Alex Mennie that his trial under the charges would not occur until after the disposition of the action of the United States of America against the Industrial Association of San Francisco et al. in the Federal Court (p. 314.) Part of Mr. George's affidavit on page 455 refers to the same matter. This subject is discussed in appellant's brief at pages 109, 110.

Z. T. Thorning, acting for the Gray, Thorning Lumber Company, was also refused lime by this

company, acting through its San Francisco representative, W. C. Reveal (p. 317).

Victoria, British Columbia.—The Golden Gate Building Materials Company purchased 1,500 barrels of lime through W. K. Hughes, a broker, to be manufactured and sent from the Perie Lime Syndicate, Victoria, British Columbia, in October, 1922. Thereafter Hughes advised A. Knowles, acting for the Golden Gate Building Materials Company, that he could not have the lime supplied to that company on account of the opposition of the Industrial Association of San Francisco (p. 321). This lime was to be shipped from a place near Victoria, British Columbia, by boat, consigned to the Golden Gate Building Materials Company, and to be delivered direct to said company in the city of San Francisco. After making the sale, Leon Levy and Paul I. Fagan, representing the Industrial Association of San Francisco, advised the broker Hughes that they desired to purchase his contract. He refused to sell it without the consent of the Golden Gate Building Materials Company. Upon earnest solicitation of the broker, the Golden Gate Building Materials Company released him from the contract. He suffered a loss and made demand upon Reveal for payment of his commission. Max Kuhl, attorney for the Industrial Association, sent him a check for \$240, his commission at 16 cents per barrel on said 1,500 barrels of lime (p. 323). The check was inclosed in a letter, signed "M. J. K.," on the letterhead of the In-

dustrial Association of San Francisco, addressed to W. K. Hughes and Company, under date of November 2, 1922 (p. 324). In the regular course of business the same company, Perie Lime Syndicate, had shipped the Golden Gate Building Materials Company 100 barrels of lime on August 3, 1922, the sale having been made through the same broker. The transaction of August 3, 1922, showed interstate commerce uninterrupted; the transaction of October, 1922, showed interstate commerce interrupted by the defendant conspirators. The record does not support the following statement in appellants' brief at page 108:

This testimony shows conclusively that the request for the cancellation originated with the Golden Gate Company itself, which, prior to the date of shipment, had embraced the American Plan.

The Golden Gate Building Materials Company did not embrace the American Plan prior to October, 1922, and was being refused permits by the Builders Exchange as late as August, 1923 (p. 327).

Vancouver, British Columbia.—Mr. Horton, of the Portland Lime and Cement Company, which produces lime at Blubber Bay, Vancouver, British Columbia, refused lime to the Gray, Thorning Lumber Company (p. 317).

4. *Plumbing Supplies*

Various exhibits as to the plumbing situation will be found at pages 16, 37, 38, 40 to 46 of this

brief. On May 31, 1922, conferences were held between the Industrial Association and the plumbing supply houses engaged entirely or almost entirely in interstate commerce, in which it was determined to black list the bad plumbers (pp. 84, 85, 157). About November 20, 1922, the practice of mailing black lists to dealers in plumbing and steam-fitting supplies was discontinued. In lieu thereof, the Industrial Association furnished to the Industrial Relations Committee of the Builders' Exchange the names of all plumbing contractors and master plumbers operating contrary to the rules and the name of the builder, contractor, and all persons employed by such contractor, and the names of owners of buildings, and it was agreed that the Industrial Relations Committee *should not grant any permit* to such persons (pp. 85, 86). California agents and managers of branch offices of the large companies manufacturing plumbing supplies who were located in Illinois, Rhode Island, Pennsylvania, Michigan, and other States kept the home offices of such company fully advised as to the success of the "open shop" fight (p. 89). Practically all plumbing and steam-fitting supplies of every kind, character, and description are manufactured outside the State of California and shipped into California from other States (p. 86). On April 15, 1922, W. H. George wrote (p. 111):

In common with all other master plumbers, your business must be run on the

American Plan. Will you kindly call up the writer and advise him that this action has been taken?

Many witnesses testified that they were unable to purchase plumbing supplies because of the agreement between the defendants to refuse to sell unless the purchaser complied with the demands of defendants.

Mark A. Henderson was told by T. F. Leary that it would be the policy of the H. Mueller Manufacturing Company to sell to the contractors who were operating under the American Plan. Certain lists of plumbing contractors who were supposed not to be operating in accordance with the American Plan were furnished Mr. Henderson. The supplies sold in San Francisco came from its factory located at Decatur, Ill. (p. 173). A. W. Middleton, manager of the Richmond Sanitary Manufacturing Company, stated that he understood that the general purpose was to endeavor to put San Francisco on the American Plan basis and he therefore was not in favor of selling to people whose names were on the lists above mentioned (p. 172). Twenty-five or thirty of such lists were received through the mail similar to People's Exhibits 22, 23, and 24 (p. 165). A few of its items were manufactured in San Francisco; others obtained from California and the East (pp. 171, 172).

B. E. Powers, store manager for the Wolverine Brass Works, stated there were five different calls

from people on the lists which were referred to the office, and he did not believe any of them were sold material. He testified that materials sold by that company were obtained principally by shipments from the East (p. 174, 175).

Henry H. Kruger, employed by the Charles F. Hause Manufacturing Company, whose home office is at Omaha, Nebr., saw the lists marked "People's Exhibits 22, 23, 24," and stated that a Mr. Hennessey, whose name appeared on the list, applied to purchase materials, but was refused. He was refused because his name was on the list (pp. 175, 176).

Lewis L. Durkee, assistant manager for the Mark-Lally Company, stated the purpose of placing names of certain dealers in plumbing supplies on the list dated April, 1922 (No. 25), was to secure cooperation in not selling certain dealers. The company would not sell to one whose name was on the list. The company obtained its merchandise principally from eastern manufacturers (pp. 176, 177).

H. W. Noble, manager of the American Radiator Company, testified that the company did not have any plants in California. Lists similar to People's Exhibits 22, 23, and 24, were seen by the witness. Mr. C. Peterson came in to purchase a certain boiler and some radiators, but the company would not sell him. Mr. Noble felt that it was not the right thing to sell him under the circumstances, as he was running a closed shop. Mr. Peterson was engaged

in the business of plumbing and heating contractor (p. 183).

F. S. Dunn, representing Crane & Company, of Chicago, Ill., whose supplies were mostly imported from the East, stated that after receiving the afore-said lists the only person whose name appeared thereon who applied to Crane Company to purchase goods was A. Lettisch. Lettisch also applied to purchase supplies from the office, when Dunn told him he could not deliver any more fittings to him; that he would have to take the matter up with the manager. Prior to receipt of the lists, Lettisch had dealt with Crane Company, and had been sold plumbers' supplies (p. 185). The lists referred to are found on pages 142 to 149, 156 to 158.

S. Green, employed by E. Sugarman, was told when trying to buy plumbers' supplies of the Wolverine Brass Works:

Sugarman can't get anything; he is on the black list.

When asked by the clerk if he was in the employ of Sugarman and Green answered that he was, the clerk said (p. 196):

You can't have that plunger if you pay a thousand dollars for it.

S. W. Band was expelled by the grievance committee and fined. C. Peterson Company was suspended from the Builders' Exchange and fined. C. W. Higgins was found guilty, suspended and fined. George N. Weinholz received like treatment (p. 213).

Chris Peterson, a plumber and steam-fitting contractor, belonged to the Builders' Exchange and testified (pp. 277, 278):

Whenever we have an exceptionally large job and we have plenty of time to wait for the material, we place a carload order in order to get the advantage of the price. We place it with a local jobber. Sometimes we get this carload material out of his stock, and sometimes we get it from the East. * * * If we have ample time to wait for the material, he will place it in the East; in due time we are notified that the carload has been shipped, together with his invoice and bill of lading. We are notified by the railroad company or by the steamship company that the cars have arrived and we go down after them. They are unloaded down here and we take them from the wharf or from the car; either one or the other. After we take the material away we put it into our stock. * * * When we get a carload lot we ship that directly from the East. * * * I get materials sometimes from a boat or a ship. * * * It comes from the East and is shipped through the Panama Canal.

He said:

I was a member of the Builders' Exchange once. I don't know whether I am a member now. I sent in my resignation, but I don't know whether it has been accepted.

Antone Lettisch testified to his difficulty in securing plumbing materials (pp. 197-199).

The plan was in force not to issue permits for any building material until it was known that the plumbing contractor would support the American Plan. If the plumbing contractor was not satisfactory, none of the articles on the permit list could be purchased; and if none of the articles on the permit lists could be purchased, then necessarily the plumbing supplies can not be purchased.

A list of the large plumbing companies who had representatives in San Francisco and who were members of the Industrial Association are shown on pages 159 and 160 of the record, in a letter issued by Paul Eliel, acting for the Industrial Association of San Francisco. These companies were cognizant of conditions in San Francisco, and most of their representatives attended the meeting of May 31, 1922.

The Builders' Exchange and the Industrial Association arrogated to themselves complete control over building materials in the four counties nearest San Francisco and sought by every means in their power to prevent interstate and foreign shipments of building materials from coming into that territory. Their aim was to completely monopolize the supply of all such building materials and to prevent anyone not cooperating with them in maintaining the American Plan from getting the supplies with which to carry on building operations in that territory.

ARGUMENT

An examination of the decree entered in the court below will disclose that only attempts by defendants to interfere with interstate and foreign commerce are covered by the decree. The particular part of the decree necessary to be considered is as follows (p. 38) :

That the said defendants and each of them, and their members, officers, agents, servants, and employees, and all persons acting under, through, by or in behalf of them, or any of them, or claiming so to act, be and hereby are perpetually enjoined, restrained, and prohibited, directly and indirectly, individually and collectively, from—

(a) Requiring any permit for the purchase, sale, or use of building materials or supplies produced without the State of California and coming into said State of California in interstate or foreign commerce.

(b) Making as a condition for the issuance of any permit for the purchase, sale, or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without said State of California.

(c) Attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within said State of California.

(d) Aiding, abetting, or assisting, directly or indirectly, individually or collectively,

others to do any or all of the matters or things herein set forth.

Nothing in the form of the decree seeks to prevent the doing of any act which does not affect interstate commerce.

During the years 1922 and 1923 the defendants engaged in a concerted effort to force all builders in the territory surrounding San Francisco to adopt and carry out the so-called American Plan. The Builders Exchange, the Industrial Association of San Francisco, and all the members of both organizations, including individuals and corporations both within and without the State of California who cooperated with them, determined that no builder or employer who did not maintain the so-called American Plan should obtain the necessary building materials to proceed with his work.

The American Plan as originally outlined (People's Exhibit No. 8, p. 112) contemplated that the foreman on every job must be a non-union man (Trade Rule No. 12, p. 136) and that the proportion of non-union men employed in each craft upon each job should be substantially fifty per cent. This is claimed to have been modified later so that no specific percentage of non-union men in any craft was required upon any job.

An industrial conflict between the "open shop" and the "closed shop" was in progress. The great weapon of the employers who joined the conspiracy commenced by the defendants was the control of

supplies of building materials. It is frankly stated on page 15 of Appellants' brief:

The employees had ammunition, their right to refuse to work. The employers, on the other hand, had ammunition. In this case the ammunition was building materials.

This weapon was used to force every builder and employer in and about San Francisco to adopt and carry out the plan determined upon by defendants. There was no choice left to a contractor or a builder as to how he should run his job or treat those employed by him. If he desired to operate a union job, he did so at the peril of being unable to get building materials to do his work. If the plan and purpose of defendants succeeded, he would get no materials. The means by which the defendants used the weapon of potential control of building materials were:

1. Permit system.
2. Exaction of pledges from contractors to adopt the American Plan.
3. Refusal to grant permits to any one who would not pledge himself to adopt and carry out the American Plan.
4. Trials before the grievance committee of the Builders Exchange of those who violated their pledge or who did not carry out the American Plan.
5. Fines for violations of rules in selling building materials.
6. Black lists.
7. Inspectors reports.

The record leaves no doubt as to the purpose of defendants to unite under their control all materials on hand or which would be shipped into the specified territory, whether from within or without the State of California, into one great powerful and effective weapon, by the use of which they might compel all contractors and builders in and about San Francisco to adopt the American Plan. The position of the Government upon the law of this case may be stated in the following language:

Every employer has the right to employ his men upon whatever terms may be mutually satisfactory. He may operate a "closed shop" or an "open shop," as he sees fit. He may make either membership or non-membership in a union a condition of employment. This right may not be taken away by any group of men, combining to prevent him from employing union men only if he desires to do so. Where a combination exists which dictates the terms and conditions of employment, it is unlawful. If such a combination directly restrains interstate commerce, it violates the Sherman Anti-trust Law.

The questions presented do not require the citation of numerous authorities and the scope of the argument here presented will be confined to those which seem controlling.

I

The object sought to be accomplished by the defendants was unlawful

It was the purpose of defendants in this case to take away from employers the right to employ men

upon any other terms than those of the so-called American Plan. Every employer who joined the combination stripped himself for the time being of the right to run his job upon such terms as he pleased.

The constitutional right of an employer to dispense with the services of an employee because of his membership in a labor union was recognized by this court in *Adair v. United States*, 208 U. S. 161, where an Act of Congress was held to be an arbitrary interference with the liberty of contract which no government could legally justify in a free land.

This case was followed in the case of *Coppage v. State of Kansas*, 236 U. S. 1, where a State statute was held to interfere with the same constitutional right of an employer. In the latter case it was distinctly stated, at page 20, that there can not be one rule of liberty for the labor organization and its members and a different and more restrictive rule for employers.

The court expressly limited its consideration to agreements made voluntarily and without coercion or duress and which had no reference to interference with the rights of third parties or the general public (p. 20).

In the case of *Hitchman Coal & Coke Company v. Mitchell*, 245 U. S. 229, 250, it was held that the plaintiff was acting within its lawful rights in employing its men only on terms of continuing

non-membership in the United Mine Workers of America, and that both employers and employees have an interest which is entitled to the protection of the law in the freedom of the former to exercise without interference or compulsion his judgment as to whom he shall employ.

The present is just such a case where the defendants joined in a combination to compel third persons and strangers to submit to certain limitations in their employment of labor. The elements of combination and coercion are both present. Such a combination is, however, not *per se* actionable by the Government under any Federal statute, and the fact that the defendants objected to a "closed shop" in building operations in San Francisco is only an incident in this case. It happened to be the reason for the attempt of defendants to restrain interstate commerce and the cause of the restraint thereby effected. But wholly outside of the desire of these defendants to have "open shop" conditions prevail in the building industry, their conduct in combining to obstruct the free flow of plaster, lime, lath, cement and other supplies in the usual channels of interstate commerce made the decree against them proper and necessary.

II

The means employed by the defendants to accomplish their object directly restrained interstate commerce

The effect of the combined trade controlled by the defendants was a threat to manufacturers

of building materials outside of the State of California which was intended to and which did in fact restrain those manufacturers from shipping building materials to "black listed" (p. 386) dealers and contractors and "ineligibles" (p. 294).

Nor was the cooperation of contractors in adopting the American Plan voluntary. They were forced to adopt that plan with reference to contracting with employees under penalty of not obtaining permits and not obtaining building material. They were required to sign pledges of allegiance to the conspiracy. Twelve thousand pledge cards were signed by contractors and delivered to the secretary of the Builders Exchange between April 13, 1922, and May 26, 1923 (p. 135). By these pledges contractors agreed that their jobs would be run on the American Plan (p. 124). No permits for building materials could be obtained unless the contractor signed a pledge card (p. 136). A contractor who had signed the pledge card but who did not strictly carry out the American Plan was warned that anyone not complying with the pledge need not apply for any more permits (p. 114). Those who failed to comply with the pledge were haled before the grievance committee and fined (pp. 213 to 216).

That such an agreement as the one between defendants in this case is one in restraint of trade is undeniable, whatever the motive or necessity which has induced the compact.

It was necessary and proper for the District Court to enjoin all acts which might result in such a restraint. The real contention of appellants in this case is that the defendants did not intend to restrain interstate commerce and that their acts did not involve any unreasonable and undue restraint of such trade or commerce. That contention presents a question of fact, the solution of which must be arrived at by a consideration of the evidence, to the most important parts of which we have attempted to direct the court's attention at pages 50 to 91 of this brief, wherein reference is made to the particular acts of defendants and to the pages of the record where evidence of such acts may be found. The principle, however, is clearly established that any combination which seeks to compel third persons and strangers not to engage in a course of trade except upon conditions which the members of the combination impose is an agreement in restraint of trade within the meaning of the Sherman Antitrust Act.

Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 438.

Loewe v. Lawlor, 208 U. S. 274.

Eastern States Retail Lumber Dealers Assn. v. United States, 234 U. S. 600, 611.

Montague v. Lowry, 193 U. S. 38, 47.

Duplex Co. v. Deering, 254 U. S. 443, 465, 466.

The case of *Loewe v. Lawlor*, 208 U. S. 274, established the unlawful character of an agreement between two or more persons who refuse to buy the product of a manufacturer who runs an "open shop" because such an agreement is a restraint of trade within the meaning of the Sherman Act.

So the agreement in this case between the defendants not to sell material to a builder or contractor operating a "closed shop" is unlawful for the same reason and is within the condemnation of the Sherman Anti-trust Act because it directly restrains interstate commerce.

This case involves the application on behalf of union labor of exactly the same principles announced by this court in the case of *Loewe v. Lawlor*, 208 U. S. 274 and 235 U. S. 522.

If it was proper for the courts to declare illegal a combination among members of trades unions to prevent non-union made hats from being distributed among members of unions and their sympathizers, it is just as important to prevent a combination among employers to prevent building materials from being procured by the employers of union labor. The Danbury hatters proposed to exercise their constitutional right to operate a non-union shop and they were protected against an illegal combination formed for the purpose of coercing them into abandoning that right. The Five Big Plasterers in San Francisco were threatened with the impossibility of obtaining plaster if they operated a "closed shop" or re-

fused to operate their jobs on the American Plan. The only difference in principle between the two cases was that in the Hatters' case the controversy arose between private parties under section 7 of the Act of July 2, 1890, whereas in the present case the Government is invoking section 4 of the same Act. The defendants in *Loewe v. Lamlor*, 208 U. S. 274, 305, were engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization to be part and parcel of a combination known as the United Hatters of North America.

In the case at bar the defendants are engaged in a combination, scheme, and effort to force all employers in the building trades in and about San Francisco, against their will and their previous policy of carrying on their business, to carry out the American Plan (pp. 112, 113, 114). In *Loewe v. Lamlor*, *supra*, the defendants intended to control the employment of labor by requiring that employers should run "closed shops." In the present case the defendants intended to control the employment of labor by requiring employers to operate "open shops." In both cases control of the channels of sale and distribution of commodities in interstate commerce was the direct means used to accomplish the primary object.

In the case of *Duplex Company v. Deering*, 254 U. S. 443, Mr. Justice Pitney, at page 462 of the opinion, said:

These presses are sold throughout the United States and in foreign countries; and, as they are especially designed for the production of daily papers, there is a large market for them in and about the City of New York. They are delivered there in the ordinary course of interstate commerce, the handling, hauling, and installation work at destination being done by employees of the purchaser under the supervision of a specially skilled machinist supplied by complainant. The acts complained of and sought to be restrained have nothing to do with the conduct or management of the factory in Michigan, but solely with the installation and operation of the presses by complainant's customers.

At page 465 he says:

Unrestrained access to the channels of interstate commerce is necessary for the successful conduct of the business.

At page 467, in commenting upon the cases of *Lawlor v. Loewe*, 235 U. S. 522, and *Eastern States Retail Lumber Dealers' Association*, he said:

It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the prohibition as one accomplished by force or threats of force; and it is not to be justified by the fact that the participants in the combination or con-

spiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute.

The injunctive relief granted by the court below was not broader than that approved by this court in *Duplex Company v. Deering, supra*.

That the combination among defendants caused a restraint upon interstate commerce in building materials within the meaning of the Anti-trust Law is demonstrated by a consideration of the facts in the *Eastern States Retail Lumber Dealers Association v. United States*, 234 U. S. 600. In that case retail dealers in lumber proposed to impose as a condition of carrying on trade that wholesalers should not sell in such manner that a local retail dealer might regard such sale as an infringement of his exclusive right to trade, upon pain of the wholesaler being reported as an unfair dealer to a large number of other retail dealers associated with the offended dealer, the purpose being to keep the wholesaler from dealing not only with the particular dealer who reports him but with all others of the class who may be informed of his delinquency.

In that case the conspiracy was dominated by the purpose to keep the commodity—lumber—within a channel of trade prescribed by the conspirators. In the instant case the conspiracy is to prevent building materials being distributed in the natural course so that it shall be distributed only in a channel fixed and controlled by the conspirators.

In the *Eastern States Lumber Association case*, *supra*, Mr. Justice Day, at page 612 of the opinion, said:

The circulation of these reports not only tends to directly restrain the freedom of commerce by preventing the listed dealers from entering into competition with retailers, as was held by the District Court, but it directly tends to prevent other retailers who have no personal grievance against him and with whom he might trade from so doing, they being deterred solely because of the influence of the report circulated among the members of the associations. In other words, the trade of the wholesaler with strangers was directly affected, not because of any supposed wrong which he had done to them, but because of the grievance of a member of one of the associations, who had reported a wrong to himself, which grievance when brought to the attention of others it was hoped would deter them from dealing with the offending party. This practice takes the case out of those normal and usual agreements in aid of trade and commerce which may be found not to be within the act and puts it within the prohibited class of undue and unreasonable restraints, such as was the particular subject of condemnation in *Loewe v. Lawlor*, *supra*.

The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control

the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe Co. v. U. S.*, 175 U. S. 211, 241, 242.

On page 614 he says:

A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade. "But," as was said by Mr. Justice Lurton, speaking for the court in *Grenada Lumber Co. v. Mississippi*, 217 U. S. 433, 440, "when the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed."

When the retailer goes beyond his personal right, and, conspiring and combining with others of like purpose, seeks to obstruct the free course of interstate trade and commerce and to unduly suppress competition by placing obnoxious wholesale dealers under the coercive influence of a condemna-

tory report circulated among others, actual or possible customers of the offenders, he exceeds his lawful rights, and such action brings him and those acting with him within the condemnation of the act of Congress, and the District Court was right in so holding.

The very circulation of information among the manufacturers of plaster, lime, cement, and plumbing materials located in States other than California of the names of contractors and builders or dealers who were not operating upon the American Plan or who refused to pledge themselves to operate upon that Plan, was intended to have the natural effect of causing such manufacturers to withhold sales and shipments from the concerns so listed. In *Eastern States Retail Lumber Dealers' Association v. United States*, *supra*, at page 609, Mr. Justice Day said:

It was and is conceded by defendants and the Court below found that the circulation of this information would have a natural tendency to cause retailers receiving these reports to withhold patronage from listed concerns. That was of course the very object of the defendants in circulating them.

In other words, the circulation of such information among the hundreds of retailers as to the alleged delinquency of a wholesaler with one of their number had and was intended to have the natural effect of causing such retailers to withhold their patronage from the concern listed.

The decisions of this court in *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, and *Loewe v. Lawlor*, 208 U. S. 274, were applied to the facts in the *Eastern States Lumber Association* case in the following language (pp. 610, 611) :

And in *Loewe v. Lawlor*, *supra*, this court held that a combination to boycott the hats of a manufacturer and deter dealers from buying them in order to coerce the manufacturer to a particular course of action with reference to labor organizations, the effect of the combination being to compel third parties and strangers not to engage in a course of trade except upon conditions which the combination imposed, was within the Sherman Act. In *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, after citing *Loewe v. Lawlor*, *supra*, this court said (p. 438) :

“ But the principle announced by the court was general. It [the Sherman Act] covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital, or unlawful combinations of labor; and we think also whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words, or printed matter.”

In the case of *Montague v. Lowry*, 193 U. S. 38, Mr. Justice Peckham, at page 47, said:

The plaintiffs, however, could not, by virtue of any agreement contained in such association, be legally put under obligation to become members in order to enable them to transact their business, as they had theretofore done and to purchase tiles as they had been accustomed to do before the association was formed.

In that case the commodity dealt in was unset tiles. There was an association among dealers in San Francisco to shut out non-members from purchasing tiles. The amount of business done amounted to only one per cent of the business of dealers in tiles in that city. The express object of the Association was to unite therein all dealers in San Francisco and vicinity. On page 45 of the opinion, Mr. Justice Peckham said:

It is not the simple case of manufacturers of an article of commerce between the several states refusing to sell certain other persons. The agreement is between manufacturers and dealers belonging to an association in which the dealers agree not to purchase from manufacturers not members of the association and not to sell unset tiles to anyone not a member of the association for less than list prices.

It was held that the whole thing was so bound together that when looked at as a whole the sale of unset tiles ceased to be a mere transaction in

the State of California and became a part of a purpose which, when carried out, amounted to and was a contract or combination in restraint of interstate trade or commerce.

The obstruction and restraint of a scheme or plan like that of the defendants in this case was illustrated in the case of *Grenada Lumber Company v. Mississippi*, 217 U. S. 433, which did not involve a question of interstate commerce at all. The combination among retail dealers in lumber, sash, and doors was held illegal under a statute of the State of Mississippi. The case came to this court upon the claim that the Mississippi anti-trust statute, as construed by the Supreme Court of Mississippi, was in conflict with the Fourteenth Amendment to the Constitution of the United States, because it abridged the freedom of contract. Mr. Justice Lurton, at page 440 of the opinion, said:

That any one of the persons engaged in the retail lumber business might have made a fixed rule of conduct not to buy his stock from a producer or wholesaler who should sell to consumers in competition with himself, is plain. No law which would infringe his freedom of contract in that particular would stand. But when the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many

acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed. (*Callan v. Wilson*, 127 U. S. 555, 556.)

For the purpose of suppressing this competition they have not stopped with an individual obligation to refrain from dealing with one who sells within his own circle, and thereby deprives him of a possible customer, but have agreed not to deal with any one who makes sales to consumers, which sales might have been made by any one of the seventy-seven independent members of the association. Thus they have stripped themselves of all freedom of contract in order to compel those against whom they have combined to elect between their combined trade and that of consumers. That such an agreement is one in restraint of trade is undeniable, whatever the motive or necessity which has induced the compact.

In the case of *Federal Trade Commission v. Raymond Co.*, 263 U. S. 565, Mr. Justice Sanford, at page 573 of the opinion, said:

A different case would of course be presented if the Raymond Company had combined and agreed with other wholesale dealers that none would trade with any manufacturer who sold to other wholesale dealers competing with themselves, or to retail dealers competing with their customers. An

act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed. *Grenada Lumber Co. v. Mississippi, supra*, p. 440; *Eastern States Lumber Assn. v. United States, supra*, p. 614. See also *Binderup v. Pathe Exchange, ante*, 291.

The real gist of the conspiracy in this case was the use of force to coerce manufacturers outside of the State of California to withhold the materials manufactured by them from anyone within the State of California who did not submit to the will of the conspirators. The power of defendants is shown by a stipulation in the record (p. 279) that 90 per cent of the new building work in San Francisco was being done by members of the defendant, the Builders' Exchange. At a meeting between representatives of the Industrial Association and the plumbers' supply houses, held May 31, 1922, representatives of the important manufacturers of plumbing supplies were present (pp. 154, 155, 157). Between April 28, 1922, and November 23, 1922, a plumbing contractor who refused to adopt the American Plan was refused plumbing supplies by each one of the firms represented at that meeting except P. E. O'Hair & Company (p. 61). These plumbing supplies were manufactured outside the State and shipped into the State (pp. 86, 454).

Under the decisions above cited, it was enough if the natural tendency of the acts done by the defendants was to cause manufacturers from without the State of California to withhold shipments from builders and contractors who refused to operate upon the American Plan. The vice of defendants' plan was in preventing building materials being distributed in the natural course of trade. The defendants had no right to keep building materials out of the general channels of commerce and to attempt to direct that they should be distributed only in a channel controlled by them. The conspiracy was to keep commodities within certain channels, to wit, among sympathizers with the American Plan. Any contractor desiring to operate a union shop in San Francisco had the right to obtain his building materials in the natural course of trade without obstruction on the part of the defendants. The defendants violated the law when they joined in a conspiracy to prevent him from obtaining materials from outside the State except on a pledge to conform to their wishes and to operate upon the American Plan. The restraint occasioned by unlawful contracts, trusts, pooling arrangements, black lists, boycotts, coercion, threats, intimidation, whether effective in whole or in part, was unlawful. (*Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, 438.)

III

The restraint on interstate commerce was material

It was impossible for the Government to institute an investigation which would cover all manufacturers outside of the State of California who were solicited to and did cooperate with defendants in withholding materials from contractors employing union labor in and about the city of San Francisco. That such investigations are not complete is due to the magnitude of the commerce involved. Enough information was obtained to justify the belief that the defendants were interfering with interstate commerce, and enough evidence was introduced to show the purpose of the defendants and the general nature of their conduct and its effect in restraining interstate commerce.

The contention is made (App. Brief, p. 17) that cement, lime, plaster, etc., were materials produced in California with a few inconsiderable exceptions. The evidence shows that not more than one per cent of the plaster used in San Francisco was produced in California. Most of it was manufactured in the States of Montana, Nevada, Utah, and Washington (p. 320). We have shown the shipments of carload lots of cement and lime from Washington, British Columbia, Kansas, and Ohio. Mr. George himself stated that the very reason lumber, steel, hardware, paints, plumbing supplies, lath, wall board, and glass were not put under the permit system was to avoid the possibility of interfering in any way with

interstate commerce (p. 454). But lath, wall board, and Keene cement were put under the permit system in June, 1922 (pp. 138, 139).

It is admitted that these articles were manufactured and shipped from other States to California (p. 454).

The interference of defendants in the shipment of carload lots where the shipments went directly from the manufacturer to the consumer leaves no room for the contention that the materials covered by the permit system which were produced outside the State of California were in warehouses in San Francisco at the time and that no permits were required for any material except that produced in the State of California or which had been finally separated from interstate commerce. (App. Brief, pp. 27, 28, 29.) Illustrations of the sources of supply of such materials interfered with by defendants are referred to as follows:

Carload lots of cement manufactured in Ohio by the Sandusky Cement Company (pp. 379, 380).

Carload lots of cement manufactured in Kansas and shipped by Best Brothers Keene Cement Company (pp. 387-399).

Carload lots of lime from the State of Washington, shipped by the Tacoma & Roche Harbor Lime Company (pp. 292-298).

Carload lots of lime shipped from Victoria, British Columbia, by the Perie Lime Syndicate (pp. 321, 323, 324).

Carload lots of plaster shipped from Montana by the Three Forks Portland Cement Company (p. 320).

Carload lots of plaster shipped from Nevada by the Pacific Portland Cement Company (pp. 76, 311, 317.)

Carload lots of plaster shipped from Nevada by the Standard Gypsum Company (p. 327).

Carload lots of plaster shipped from Utah by the Jumbo Plaster Company (pp. 269, 272, 274, 301, 317).

It is claimed in Appellants' brief that the choice of material was made for the specific purpose of preventing any question arising as to interference with interstate commerce. (App. Brief, p. 17.) The defendants did not long adhere to that purpose. In fact, Mr. George, leader of the conspiracy, on April 12, 1922, expressly stated (p. 137.):

If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to all other materials used in the building trades.

Any arrangement between defendants to prevent contractors and builders in San Francisco who desire to employ union labor from obtaining building materials manufactured outside the State of California would violate the Sherman Anti-trust Law.

The defendants would have no motive to agree among themselves to withhold from such contractors and builders plaster or other articles manufactured within the State of California if the con-

tractors and builders could obtain an adequate supply from without the State. In applying the permit system to plaster, only one per cent of which was manufactured within the State, and to metal lath and wall board, almost all of which was manufactured outside the State, the purpose to directly and unduly restrain interstate commerce was manifested. The purpose which dominated the defendants was to drive out of business any employer who refused to abandon the "closed shop." No one can tell how far the conspirators would go in such a conflict. It is enough to know that they were using an unlawful weapon, the absolute control of certain building materials necessary in the construction of every building. If they could control the supply of any essential material, their object could be accomplished. No building could proceed far without cement, lime, and plaster. If any builder could not obtain these materials from manufacturers within the State of California, he would necessarily look to sources of supply outside the State. If he could get neither, he could not proceed far with any building.

In determining whether interstate commerce is involved in this case it is not necessary to consider the decisions of this court in *United States v. E. C. Knight Company*, 156 U. S. 1; *Hopkins v. United States*, 171 U. S. 578; *Anderson v. United States*, 171 U. S. 604. The distinction between those cases and one like the present case was pointed out in the opinion of *Montague v. Lowry*, 193 U. S. 38, at

page 48, and in *Stafford v. Wallace*, 258 U. S. 495, at page 524. Nor is it important to consider cases like *Coe v. Errol*, 116 U. S. 517; *Kidd v. Pearson*, 128 U. S. 1; *Leisy v. Hardin*, 135 U. S. 100, 116, and other decisions which draw the line where interstate commerce commences and where it ends.

Mr. Justice Sutherland, in *Binderup v. Pathe Exchange*, 263 U. S. 291, at page 311 of the opinion, calls attention to the fact that the cases upholding state taxation as not constituting an interference with interstate commerce, are of little value in determining what constitutes a cause of action under the Anti-trust Act. He said:

It does not follow that because a thing is subject to state taxation it is also immune from federal regulation under the Commerce Clause.

The cases of *United Mine Workers of America v. Coronado Coal Company*, 259 U. S. 344, and *United Leatherworkers International Union v. Herket & Meisel Trunk Company*, 265 U. S. 457, are both distinguishable from the instant case by the fact that the restraints involved in such cases related to the prevention of manufacture as distinguished from interference with the distribution of commodities after they had been manufactured. The instant case does not involve any effort on the part of defendants to prevent the manufacture of building materials. If the conspiracy among the defendants affects interstate commerce at all, it affects the transportation and

distribution of building materials and not their manufacture or production.

The appellants' brief, on pp. 47-57, discusses in considerable detail *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, and *United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 457, and insists with great earnestness that the facts in those cases are similar to those in the present case, and that the decisions determine the issues now presented. The facts in the present case are, however, fundamentally different from those in the *Coronado* and the *Herkert & Meisel* cases, but the general principles stated by the court in both decisions strongly support the Government's contentions in the present case.

The opinions in both the *Coronado* and *Herkert & Meisel* cases emphasize the principle that the mining of coal and the making of goods are not in themselves commerce and that the fact that those commodities are to be afterwards shipped in interstate commerce does not make their production a part thereof, and that therefore obstructions to mining or manufacturing are not in themselves direct restraints of interstate commerce, although of course they may affect it indirectly by reducing the amount of the commodities to be carried in that commerce.

The facts in the present case would only be similar to those in the *Coronado* and *Herbert & Meisel* cases if the defendants had attempted to interfere with the production of building materials, and if

such interference had caused a diminution in the amount of such materials carried in interstate commerce. The record, however, does not contain any evidence of such facts. It might be assumed that the appellants consider the situation at the other end of the interstate commerce—i. e., at the place of final consumption or utilization rather than of manufacture or production—makes the facts in this case similar to those in the other cases, but such a contention could only be sound, if ever, if the defendants had obstructed the final consumption or utilization of the building materials—i. e., had obstructed by picketing, persuasion, or any comparable means, the actual construction of buildings after the contractors had without hindrance secured the necessary materials. Here again, however, the record does not contain any evidence of such facts. What the defendants actually did in this case was to control directly through the permit system the transportation of building materials from other States into California and their sale and distribution to dealers and building contractors.

The opinions in both the *Coronado* and *Herkert & Meisel* cases further emphasize the principle that obstructions to the mining of coal or the making of goods are illegal, although indirect, restraints of interstate commerce, if the obstructions are intended to restrain commerce in the commodities or have necessarily such a direct, material, and substantial effect to restrain it that the intent reason-

ably must be inferred. In the *Herkert & Meisel* case the court stated (p. 471):

This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. *It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price, or discriminate as between its would-be purchasers that the unlawful interference with its manufacture can be said directly to burden interstate commerce.*

Even, therefore, if the facts in the present case were similar to those in the *Coronado* and *Herkert & Meisel* cases and even if the obstruction to interstate commerce were indirect and not direct, as it has heretofore been shown to be, the result achieved by the defendants would come directly within the condemnation of the paragraph quoted, as that result was the discrimination between would-be purchasers of building materials caused by the permit system and the black lists.

In attempting to compare the facts in the present case with those in the *Coronado* and *Herkert & Meisel* cases and to distinguish them from those in *Loewe v. Lawlor* and *Duplex Co. v. Deering* the appellants necessarily at time confuse motive with intent. The motive and primary object in

each case was the same, to enforce certain conditions of employment, and the only respect in which the present case differs is that here the employers are the coercers instead of the coerced, the defendants instead of the plaintiffs. The real distinction between the two sets of cases, *Loewe v. Lawlor* and *Duplex Co. v. Deering* on the one hand and the *Coronado* and *Herkert & Meisel* cases on the other hand, is that in the first two cases the means selected to accomplish the primary object happened to be a direct attack on interstate commerce, whereas in the other two cases the means selected to accomplish the same primary object happened to be local violence and intimidation which stopped production and thereby indirectly affected interstate commerce by slightly reducing its volume. The present case clearly belongs in the same classification as *Loewe v. Lawlor* and *Duplex Co. v. Deering* because both of the directness and of the character of the restraint imposed.

IV

Defenses examined

1. That interstate commerce is directly affected has already been discussed.

2. The claim that acts of individuals were beyond the plan or agreement of defendants can not be maintained.

It is claimed that some of the defendants acted as individuals (p. 27, Appellants' Brief) and that

certain defendants did not participate in any acts complained of (Appellants' Brief, pp. 17, 80).

Those of the defendants who became members of the Industrial Association of San Francisco and the Builders Exchange and who received the bulletins and letters sent out by W. H. George, the leader of this conspiracy, are bound by his acts and declarations. There is no evidence in the record that any of the defendants withdrew from membership in the Industrial Association or the Builders Exchange after the commencement of this action in the District Court of the United States.

The rule of evidence is stated by Mr. Justice Pitney in *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229, at page 249, as follows:

The rule of evidence is commonly applied in criminal cases, but is of general operation; indeed, it originated in the law of partnership. It depends upon the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them.

The principle there announced makes the members of the combination equally responsible for the acts of those who were selected as common agents.

The Bethlehem Ship Building Corporation adopted the answer of the Industrial Association of San Francisco as its answer (p. 25) and it is bound by all the admissions made by that association in its answer. There is no denial by the Bethlehem Corporation in any of the pleadings of its membership in the association.

The only place in the record to which we can call attention to the attitude of the Builders' Exchange of San Jose is a resolution adopted at a meeting held in February, 1922, where it was resolved (p. 27)—

that from that time forward said Builders' Exchange, and its members, would employ such artisans and workmen in the building trades, regardless of whether such artisans or workmen were, or were not, affiliated with any Labor Union, and that its members would not sell building material to any person who discriminated against non-union artisans and workmen by refusing to employ any artisan or workman unless he was a member of the Labor Union.

The Grinnell Company is connected with the conspiracy by the act of F. H. Maynard, with offices at 1 Liberty Street, New York. On May 20, 1922, John Coefield, president of the United Association of Plumbers and Steamfitters of United States and Canada, notified Maynard by telegram that the Grinnell Company of the Pacific, Inc., was refusing to sell and was not selling and intended to continue to refuse to sell any supplies whatsoever

to any persons more than one-half of whose employees are members of labor unions or whose foreman is a member of a labor union. Maynard replied by telegram that he would investigate and let Coefield know the result of his investigation, but Maynard made no further reply (p. 57). Coefield called upon Maynard on June 20, 1922, at his office and Maynard told Coefield that he had learned that it would be impossible for the Grinnell Company of the Pacific to operate or do business in and around the city and county of San Francisco unless it continued to refuse to sell any supplies whatsoever to any persons more than one-half of whose employees were members of labor unions. Maynard then said to Coefield that the Grinnell Company, Inc., would back up the Grinnell Company of the Pacific in its stand to discriminate against union labor and in refusing to sell. Coefield testified that he had several other conversations, the last of which occurred in February, 1923 (pp. 57, 58). There is no claim that the Grinnell Company of the Pacific was not cooperating with the defendants.

As to the other seven defendants mentioned on page 90 of Appellants' brief, it is conceded that they were members of the Industrial Association or Builders' Exchange, or both. From the official publications, bulletins, and letters sent out by W. H. George to the members of this Association, it is inconceivable that the defendants did not know the purposes and general plan of operation of these

associations. (*Lawlor v. Loewe*, 235 U. S. 522, 536.)

3. The contention that the alleged acts affecting interstate commerce were of comparative unimportance (App. Brief, pp. 17, 99) is not material to the decision in this case. It was decided in *Montague v. Lowry*, 193 U. S. 38, at page 46:

Again, it is contended the sale of unset tiles is so small in San Francisco as to be a negligible quantity; that it does not amount to one per cent of the business of the dealers in tiles in that city. The amount of trade in the commodity is not very material, but even though such dealing heretofore has been small, it would probably largely increase when those who formerly purchased tiles from the manufacturers are shut out by reason of the association and their non-membership therein from purchasing their tiles from those manufacturers, and are compelled to purchase them from the San Francisco dealers. Either the extent of the trade in unset tiles would increase between the members of the association and outsiders, or else the latter would have to go out of business, because unable to longer compete with their rivals who were members. In either event, the combination, if carried out, directly effects a restraint of interstate commerce.

4. It is no justification that the situation required defensive measures.

The alleged unlawful conduct of the members of the unions, set forth at pages 10 to 13, and 27 of Ap-

pellants brief, furnishes no justification for the unlawful conduct of the defendants.

In the case of *Grenada Lumber Company v. Mississippi*, 217 U. S. 433, at page 441, Mr. Justice Lurton said:

But the plaintiffs in error say that the action which they have taken is purely defensive, and that they can not maintain themselves as independent dealers supplying the consumer if the producers or wholesalers from whom they buy may not be prevented from competing with them for the direct trade of the consumer.

For the purpose of suppressing this competition they have not stopped with an individual obligation to refrain from dealing with one who sells within his own circle, and thereby deprives him of a possible customer, but have agreed not to deal with any one who makes sales to consumers, which sales might have been made by any one of the seventy-seven independent members of the association. Thus they have stripped themselves of all freedom of contract in order to compel those against whom they have combined to elect between their combined trade and that of consumers. That such an agreement is one in restraint of trade is undeniable, whatever the motive or necessity which has induced the compact.

5. It is claimed that the volume of interstate commerce was not lessened (App. Brief, p. 28) but that during the period in question there was increased activity in building trade and commerce

in San Francisco. The figures seeking to prove this are found on page 26 of the Appellants' brief, showing the number and value of building permits in the city of San Francisco during the years 1920 to 1923, inclusive. It is claimed that the increase was the result of the activities of these defendants. (App. Brief, p. 26.)

The increase, however, in building operations in San Francisco was not due to the establishment of the American Plan. The building operations in the United States, as shown by the report of the Department of Commerce entitled, "Statistical Abstract of the United States, 1923," at page 353, shows the total authorized building in one hundred and thirty identical cities during the same years to be:

1920 -----	\$1,342,630,686
1921 -----	1,602,232,041
1922 -----	2,427,734,079
1923 -----	2,959,051,393

The actual increases for each of the one hundred and thirty cities is shown at pages 353 to 355 of that report, where the figures in Appellants' brief for San Francisco are found.

That the court may take judicial notice of these general conditions is indicated in the decision in the case of *The Chastleton Corporation et al. v. A. Leftwich Sinclair et al.*, 264 U. S. 543, 538.

6. The intent and motive of the conspirators is immaterial because the restraint of interstate commerce was direct.

It is claimed that if the object of the defendants was not the direct restraint of interstate commerce, there can be no restraint within the meaning of the Anti-trust Act (App. brief, pp. 52-57).

In *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344, at page 409, Mr. Chief Justice Taft distinguishes that case from the facts in the cases of *Loewe v. Lawlor*, *Eastern States Retail Lumber Dealers Assn. v. United States* and *United States v. Patten*.

The conspirators must be held to have intended the necessary and direct consequences of their acts, *United States v. Patten*, 226 U. S. 525-543; *United States v. Reading Co.*, 226 U. S. 324, 370.

CONCLUSION

The case for the Government does not rest upon any attempt to justify or excuse any acts of labor unions or their members which are claimed to have been unfair or unlawful.

A number of cases involving union labor and alleged unlawful conduct on the part of those endeavoring to force employers to operate a "closed shop" have been before this court.

The case now presented is based upon the fundamental proposition that employers may not be compelled to surrender their constitutional right to make any lawful contract with their employees with respect to membership or non-membership in a union by a concerted effort to control building materials coming into a State from outside sources.

There may not be one rule of liberty for employers and their sympathizers and a different and more restrictive rule for labor organizations and those acting in sympathy with them. If, in the industrial conflict in progress in San Francisco in 1922, the labor unions did anything unlawful, that is no excuse for the employers banding themselves together in a conspiracy to use unlawful means which must be condemned under the Federal Anti-trust Laws. *The conspiracy between defendants to prevent employers who refused to adopt the American Plan from obtaining building materials tended to and did restrain interstate trade and commerce.*

Every contractor in San Francisco had the right to obtain any building materials he might need from sources outside the State of California without interference from the defendants. Any restraints produced by peaceable persuasions are as much within the prohibition of the law as those accomplished by force or threats of force. The combination among the defendants is clearly illegal so far as it attempted to enforce its demands by interfering with the usual distribution of commodities in interstate commerce. No group of men in any State have a right to combine to prevent contractors from securing necessary supplies of building materials ordinarily brought into the State in the course of interstate commerce and sold as an incident thereof.

The decree entered in the court below is not broader than the Federal anti-trust statutes. It goes no further than the decree approved by this court in *Duplex Company v. Deering*, 254 U. S. 443-478, and it should be affirmed.

February 26, 1925.

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HENRY ANDERSON GUILER,
C. STANLEY THOMPSON,
Special Assistants to the Attorney General.

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interstate commerce, to fix prices or to stifle competition, and that the refusals had in fact no such effect. The defendants contend that this evidence does not establish a violation of the Act for the following reasons:

1. The agreement was not intended to restrain interstate trade; it was not intended to fix prices or restrain competition; it had no commercial or trade purpose.

2. Its effect on interstate commerce was secondary, remote, incidental and slight, if there was any effect at all.

3. The situs and effect of the restraint, if any, were local.

4. The defendants were themselves direct participants in the industrial controversy and committed no unlawful acts.

5. The restraint upon interstate commerce, if any, was not unreasonable.

Participants in an industrial conflict, confined to a single city and vicinity, may refuse to sell building materials in that city, to their opponents for use in that city, and if there is no intent to restrain interstate commerce, and if any effect thereon is slight, incidental and remote, there is no violation of the Anti-Trust Act. The Act condemns only those combinations which directly and unduly restrain interstate commerce. *American Column & Lumber Co. v. United States*, 257 U. S. 377-400; *United States v. Union P. R. Co.*, 226 U. S. 61.

To come within the inhibitions of the Act, we must find: A restraint of interstate commerce; direct restraint of that commerce; and undue restraint of that commerce. *United States v. Knight*, 156 U. S. 1; *Swift & Co. v. United States*, 196 U. S. 375; *United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 457; *Hopkins v. United States*, 171 U. S. 578; *Anderson v. United States*, 171 U. S. 604. In these cases the court has limited the application of the Act to agreements which exercise

a direct effect upon interstate commerce and where the intent or "dangerous probability" is to restrict that commerce. The principles marking the limits of direct and undue restraint of interstate commerce receive further illustration from a consideration of the cases in this court under the Anti-Trust Act dealing with labor disputes, a group which may conveniently be termed the *Labor Cases*. *Loewe v. Lawlor*, 208 U. S. 274; *Duplex Co. v. Deering*, 254 U. S. 443; *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344. See *United Mine Workers of America v. Pennsylvania*, 300 Fed. 965; *Finley v. United Mine Workers of America*, 300 Fed. 972, 979; *United Leather Workers v. Herkert & Meisel Trunk Co.*, *supra*.

In order that a restraint of trade shall be obnoxious to the Act, it must constitute an "undue" restraint. *United States v. Standard Oil*, 221 U. S. 1. The decisions of this court have made it clear that agreements which result in the restraint of intrastate, as distinguished from interstate, commerce are not within the Act, and that the court acquires no jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State by reason of the fact that the combination also covers commerce which is interstate. *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211.

As to the refusal to sell in San Francisco for use in San Francisco, small quantities of lime and plaster produced in other States, it is equally clear that such refusals did not constitute a violation of the Act. The goods at the time of the refusals had ceased to be in interstate commerce. *Illinois Cent. Ry. v. De Fuentes*, 236 U. S. 157; *Pub. Util. Comm. of Kansas v. Landon*, 249 U. S. 236. The materials here are not like the cattle in the *Swift Case* or in *Stafford v. Wallace* (258 U. S. 495)—not in the current of interstate commerce; the tran-

sit had stopped for all time. The materials were at their ultimate destination, never more to move out into interstate commerce. *Brown v. Huston*, 114 U. S. 622.

The decree is vague, indefinite and uncertain and does not set forth the acts or transactions which are forbidden. It is a sweeping injunction to obey the law and puts the whole conduct of the defendants at the peril of a summons for contempt. As to some of the defendants, the evidence wholly fails to show any participation in any of the acts or things complained of or any connection therewith. The court therefore committed error in entering its decree against such defendants.

Mr. Augustus T. Seymour, Assistant to the Attorney General, with whom *Messrs. Henry Anderson Guiler* and *C. Stanley Thompson*, Special Assistants to the Attorney General, were on the brief, for the United States.

The object sought to be accomplished by the defendants was unlawful. The purpose was to take away from employers the right to employ men upon any other terms than those of the so-called American Plan. Every employer who joined the combination stripped himself for the time being of the right to run his job upon such terms as he pleased.

The constitutional right of an employer to dispense with the services of an employee because of his membership in a labor union was recognized by this court in *Adair v. United States*, 208 U. S. 161, where an Act of Congress was held to be an arbitrary interference with the liberty of contract which no government could legally justify in a free land. This case was followed in the case of *Coppage v. Kansas*, 236 U. S. 1. The court expressly limited its consideration to agreements made voluntarily and without coercion or duress and which had no reference to interference with the rights of third parties or the general public (p. 20). In the case of *Hitchman Coal*

& *Coke Co. v. Mitchell*, 245 U. S. 229, 250, it was held that the plaintiff was acting within its lawful rights in employing its men only on terms of continuing non-membership in the United Mine Workers of America, and that both employers and employees have an interest which is entitled to the protection of the law in the freedom of the former to exercise without interference or compulsion his judgment as to whom he shall employ. The present is just such a case where the defendants joined in a combination to compel third persons and strangers to submit to certain limitations in their employment of labor. The elements of combination and coercion are both present.

The means employed by the defendants to accomplish their object directly restrained interstate commerce. The effect of the combined trade controlled was a threat to manufacturers of building materials outside of the State which was intended to, and which did in fact, restrain them from shipping building materials to "black listed" dealers and contractors and "ineligibles."

Nor was the cooperation of contractors in adopting the American Plan voluntary. They were forced to adopt that plan under penalty of not obtaining permits and not obtaining building material. They were required to sign pledges of allegiance to the conspiracy. That such an agreement is in restraint of trade is undeniable, whatever the motive or necessity which has induced the compact.

The real contention of appellants is that the defendants did not intend to restrain interstate commerce and that their acts did not involve any unreasonable and undue restraint of such trade or commerce. That contention presents a question of fact, the solution of which must be arrived at by a consideration of the evidence. The principle, however, is clearly established that any combination which seeks to compel third persons and strangers not to engage in a course of trade except upon con-

ditions which the members of the combination impose is an agreement in restraint of trade within the meaning of the Sherman Anti-Trust Act. *Gompers v. Buck's Stove & Range Co.* 221 U. S. 418; *Loewe v. Lawlor*, 208 U. S. 274; *Eastern States Retail Lumber Dealers Assn. v. United States*, 234 U. S. 600; *Montague v. Lowry*, 193 U. S. 38; *Duplex Co. v. Deering*, 254 U. S. 443. The very circulation of information among the manufacturers located in States other than California of the names of contractors and builders or dealers who were not operating upon the American Plan or who refused to pledge themselves to operate upon that plan, was intended to have the natural effect of causing such manufacturers to withhold sales and shipments from the concerns so listed. The obstruction and restraint of a scheme like this were illustrated in *Grenada Lumber Co. v. Mississippi*, 217 U. S. 433, which did not involve a question of interstate commerce. See *Federal Trade Comm. v. Raymond Co.*, 263 U. S. 565.

The real gist of the conspiracy here was the use of force to coerce manufacturers outside of the State to withhold the materials manufactured by them from anyone within the State who did not submit to the will of the conspirators. The power of defendants is shown by a stipulation in the record that 90 per cent of the new building work in San Francisco was being done by members of the defendant. Under the decisions above cited, it was enough if the natural tendency of the acts done by the defendants was to cause the manufacturers from without the State to withhold shipments from builders and contractors who refused to operate upon the American Plan. The vice of defendants' plan was in preventing building materials being distributed in the natural course of trade. The restraint on interstate commerce was material. In determining whether interstate commerce is involved in this case it is not necessary to con-

sider the decisions of this court in *United States v. E. C. Knight Co.*, 156 U. S. 1; *Hopkins v. United States*, 171 U. S. 578; *Anderson v. United States*, 171 U. S. 604. The distinction between those cases and one like the present case was pointed out in the opinion of *Montague v. Lowry*, 193 U. S. 38, at page 48, and in *Stafford v. Wallace*, 258 U. S. 495, at page 524. Nor is it important to consider cases like *Coe v. Errol*, 116 U. S. 517; *Kidd v. Pearson*, 128 U. S. 1; *Leisy v. Hardin*, 135 U. S. 110, 116, and other decisions which draw the line where interstate commerce commences and where it ends. See *Binderup v. Pathe Exchange*, 263 U. S. 291. The cases of *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344, and *United Leatherworkers International Union v. Herkert & Meisel Trunk Co.*, 265 U. S. 457, are both distinguishable from this case by the fact that the restraints involved in them related to the prevention of manufacture as distinguished from interference with the distribution of commodities after they had been manufactured.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This is a suit by the United States against a number of voluntary associations, corporations and individuals, charging them with engaging, and threatening to continue to engage, in a conspiracy to restrain trade and commerce in building materials among the several states, in violation of the Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209. The bill prays for an injunction restraining the further execution of the alleged conspiracy, for a dissolution of certain of the associations as illegal, and for other relief. After a hearing, the federal district court declined to dissolve any of the appellants or interfere with their general activities, but entered a decree enjoining them specifically from (a) requiring any permit for the pur-

chase, sale or use of building materials or supplies produced without the State of California and coming into that state in interstate or foreign commerce; (b) making, as a condition for the issuance of any permit for the purchase, sale or use of building materials or supplies, any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without the state; (c) attempting to prevent or discourage any person without the state from shipping building materials or other supplies to any person within the state; or (d) aiding, abetting or assisting, directly or indirectly, individually or collectively, others to do any of the foregoing matters or things. 293 Fed. 925. A reversal of this decree is sought upon the ground, mainly, that the evidence wholly fails to show any contract, combination or conspiracy in restraint of interstate or foreign trade or commerce, or a violation in any respect of the provisions of the Anti-Trust Act. Other grounds assigned, in view of the conclusion we have reached, we put aside as unnecessary to be considered.

That there was a combination and concerted action among the appellants, is not disputed. The various agreements, courses of conduct and acts relied upon to establish the case for the government arose out of a long continued controversy,—or, more accurately, a series of controversies,—between employers engaged in the construction of buildings in San Francisco, upon the one side, and the building trade unions of San Francisco, of which there were some fifty in number with a combined membership of about 99% of all the workmen engaged in the building industries of that city, upon the other side.

Prior to February 1, 1921, the unions had adopted and enforced, and were then enforcing, many restrictions bearing upon the employment of their members, which the employers, and a large body of other citizens, considered to be unreasonable, uneconomic and injurious to

the building industries, resulting, it was asserted, in decreased production, increased cost and generally retarded progress. Among the restrictions complained of, were rules limiting the number of apprentices, limiting the amount of work, limiting or forbidding the use of labor-saving devices, and interfering with the legitimate authority of the employer. The plumbers' union, for example, enforced the following, among others: no union plumber, whatever the emergency, was permitted to work on non-union material or to work overtime on Saturday without permission of the union; detailed reports were required showing the number of fixtures set each day, and men who exceeded the standard fixed by the union were disciplined; the time which any employer was permitted to stay on a job was limited to two hours a day; as many men as the union saw fit could be ordered on a job regardless of the wishes of the employer. Among the restrictions imposed by the painters' union were these: wide brushes with long handles for roof painting were prohibited, and it was required that all such work should be done with a small brush; certain labor-saving devices were prohibited; and union painters declined to paint non-union lumber.

The unions rigidly enforced the "closed shop,"—that is, they denied the right of the employer to employ any workman, however well qualified, who was not a member of a San Francisco union; and this applied to a member of a labor union in another locality, who, moreover, practically was precluded from joining a San Francisco union by reason of the cost and onerous conditions imposed. They were confederated under the name of the Building Trades Council, by means of which their combined power was exerted in support of the demands and policies of each, until they had acquired a virtual monopoly of all kinds of building trade labor in San Francisco, and no building work of any consequence could be done in that

city, except in subordination to these demands and policies.

Early in 1921, serious differences having arisen between the unions and the employers in respect of wages, hours and working conditions, an agreement for arbitration was made and a board of arbitrators selected. The board, after a hearing, made a tentative award reducing the scale of wages for the ensuing six months. Challenging the authority of the board to reduce wages, the unions refused to be bound by the award and repudiated and abandoned the arbitration. Strikes ensued; efforts to bring the strikers back to work failed; and building operations in San Francisco practically came to a stand-still. Thereupon, in an endeavor to find a solution of the difficulty, mass-meetings were held by representative citizens in large numbers and from all walks of life. At these meetings it was resolved that the work of building must go forward, and that if San Francisco mechanics refused to work, others must be employed from the outside. Funds were raised and placed in the hands of a committee of the San Francisco Chamber of Commerce, and, under its direction, workmen were brought in from the outside with promises of employment at the wages fixed by the arbitrators. Subsequently, the Industrial Association of San Francisco was organized to take the place of the committee and carry on its work. The strikers, however, returned to work, and for a time no objection was made to the employment of nonunion workmen. But later, demands were made by certain of the unions for the discharge of all non-union workmen and the restoration of the "closed shop." These demands were disregarded, and there was another strike. A boycott was instituted and acts of violence against persons and property committed. In the meantime, one of the appellants, the Builders Exchange of San Francisco, with a membership of more than one thousand building contractors and deal-

ers in building materials, in coöperation with the Industrial Association and other appellants, devised and put into effect what is called the "American plan."

The basic requirement of the plan was that there should be no discrimination for or against an employee on account of his affiliation or non-affiliation with a labor union, except that at least one non-union man in each craft should be employed on each particular job as an evidence, it is suggested, of good faith. In effect, the "American plan" and the "open shop" policy are the same.

The principal means adopted to enforce the plan was the "permit system," the object of which was to limit sales of certain specified kinds of materials to builders who supported the plan. To render this restriction effective, the person concerned was required to obtain a permit from the Builders Exchange, specifying the kinds and quantities of materials to be furnished and the particular job on which they were to be used. The materials specified were cement, lime, plaster, ready-mixed mortar, brick, terra cotta and clay products, sand, rock and gravel. Substantially all of these were California productions and were deliberately selected for that reason, in order to avoid interference with interstate commerce. The only material exception was plaster, which was brought in from the outside, but consigned to local representatives of the manufacturers or to local dealers in San Francisco, and brought to rest in salesrooms and warehouses and commingled with other goods and property, before being subjected to the permit rule. A suggestion was made at one time that, if necessary, the rule would be extended to all other materials used in the building trades; but it does not appear that this was done. It is said that lath of various kinds, wallboard and Keene cement also were put under the rule; but we think the record discloses that, in fact, this was never agreed upon or carried into effect.

There is evidence of efforts to extend the "American plan" to other cities and states. Permits were extensively withheld in respect of buildings where the "American plan" was not adopted or not enforced. Builders and contractors were constantly urged to observe the plan and were warned that failure to do so would result in a denial of future permits. A check was kept upon shops and building jobs by inspectors, and daily reports were made as to whether the plan was being observed. Whenever it appeared in any case that the plan was not being lived up to, a warning letter was sent out. Under appropriate by-laws, members of organizations subscribing to the plan who violated it were fined and in some instances expelled; and other methods, not necessary to be recited, in part persuasive and in part coercive, were adopted and enforced in order to secure a thorough-going maintenance of the plan.

With the conflict between the policy of the "closed shop" and that of the "open shop," or with the "American plan," *per se*, we have nothing to do. And since it clearly appears that the object of the plan was one entirely apart from any purpose to affect interstate commerce, the sole inquiry we are called upon to make is whether the means employed to effectuate it constituted a violation of the Anti-Trust Act; and, in the light of the evidence adduced, that inquiry need be pursued little beyond a consideration of the nature of the permit system, what was done under it, and the effect thereof upon interstate commerce.

The bases of the decree, which, in the opinion of the court below, were established, may be briefly and categorically stated as follows:

1. Permits were required for the purchase of building materials and supplies produced in and brought from other states into California.
2. Permits, even if limited to California produced materials, nevertheless, interfered with and prevented the

free movement of building materials and supplies from other states into California.

3. Persons in other states were directly prevented or discouraged from shipping building materials and supplies into California.

It will be well, *in limine*, to emphasize certain clearly established general facts, in the light of which these grounds must be considered. Interference with interstate trade was neither desired nor intended. On the contrary, the desire and intention was to avoid any such interference, and, to this end, the selection of materials subject to the permit system was substantially confined to California productions. The thing aimed at and sought to be attained was not restraint of the interstate sale or shipment of commodities, but was a purely local matter, namely, regulation of building operations within a limited local area, so as to prevent their domination by the labor unions. Interstate commerce, indeed commerce of any description, was not the object of attack, "for the sake of which the several specific acts and courses of conduct were done and adopted." *Swift and Company v. United States*, 196 U. S. 375, 397. The facts and circumstances which led to and accompanied the creation of the combination and the concert of action complained of, which we have briefly set forth, apart from other and more direct evidence, are "ample to supply a full local motive for the conspiracy." *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 411.

But it is not enough that the object of a combination or conspiracy be outside the purview of the act, if the means adopted to effectuate it directly and unduly obstruct the free flow of interstate commerce. The statute is not aimed alone at combinations and conspiracies which contemplate a restraint of interstate commerce, but includes those which directly and unduly cause such restraint in fact. See *American Column Co. v. United*

States, 257 U. S. 377, 400; *Eastern States Lumber Ass'n. v. United States*, 234 U. S. 600, 613.

It remains to apply these principles, in the light of the facts, to the several grounds above stated, upon which the decree rests.

First: That permits were required for the purchase of materials produced in and brought from other states. To the extent that this may imply that permits were required in respect of building materials or supplies produced outside the State of California and shipped into the state, it is not sustained by the evidence. The record contains two letters signed by the president of the Builders Exchange to the effect, in one, that there "are added," and, in the other of later date, that "it is now necessary to add to the permit system," other materials than those in the enumerated list; and the person addressed in the second is asked to govern himself accordingly. But the positive, uncontradicted evidence is that, in fact, permits were required for the originally listed materials and for nothing else. While about twenty-eight thousand permits in all were issued, there is a significant absence of evidence that any of them so issued related to other than such listed materials. Upon the proof, we reasonably cannot accept the view that these letters are enough to show a departure from the declared and established purpose of the movement on the whole to avoid interference with interstate trade by confining the permit system substantially to California produced articles.

It is true, however, that plaster, in large measure produced in other states and shipped into California, was on the list; but the evidence is that the permit requirement was confined to such plaster as previously had been brought into the state and commingled with the common mass of local property, and in respect of which, therefore, the interstate movement and the interstate commer-

cial status had ended. This situation is utterly unlike that presented in the *Swift Case*, *supra*, where, the only interruption of the interstate transit of live stock being that necessary to find a purchaser at the stockyards, and this the usual and constantly recurring course, it was held (pp. 398-399) that there was thus constituted "a current of commerce among the States," of which the purchase was but a part and incident. The same is true of *Stafford v. Wallace*, 258 U. S. 495, 516, which likewise dealt with the interstate shipment and sale of live stock. The stockyards, to which such live stock was consigned and delivered, are there described, not as a place of rest or final destination, but as "a throat through which the current flows," and the sale as only an incident which does not stop the flow but merely changes the private interest in the subject of the current without interfering with its continuity. In *Binderup v. Pathe Exchange*, 263 U. S. 291, 309, a commodity produced in one state was consigned to a local agency of the producer in another, not as a consummation of the transit, but for delivery to the customer. This court held that the intermediate delivery did not end, and was not intended to end, the movement of the commodity, but merely halted it "as a convenient step in the process of getting it to its final destination."

But here, the delivery of the plaster to the local representative or dealer was the closing incident of the interstate movement and ended the authority of the federal government under the commerce clause of the Constitution. What next was done with it, was the result of new and independent arrangements.

In respect of other materials of the character of those on the selected list, brought from other states, it is enough to say that the quantities were not only of little comparative consequence but it is not shown that they were subjected to the permit rule.

Second: That the permit requirement for California produced materials interfered with the free movement of materials and supplies from other states. No doubt there was such an interference, but the extent of it, being neither shown nor perhaps capable of being shown, is a matter of surmise. It was, however, an interference not within the design of the appellants, but purely incidental to the accomplishment of a different purpose. The court below laid especial stress upon the point that plumbers' supplies, which for the most part were manufactured outside the state, though not included under the permit system, were prevented from entering the state by the process of refusing a permit to purchase other materials, which were under the system, to anyone who employed a plumber who was not observing the "American plan." This is to say, in effect, that the building contractor, being unable to purchase the permit materials, and consequently unable to go on with the job, would have no need for plumbing supplies, with the result that the trade in them, to that extent, would be diminished. But this ignores the all important fact that there was no interference with the freedom of the outside manufacturer to sell and ship or of the local contractor to buy. The process went no further than to take away the latter's opportunity to use, and, therefore, his incentive to purchase. The effect upon, and interference with, interstate trade, if any, were clearly incidental, indirect and remote,—precisely such an interference as this court dealt with in *United Mine Workers v. Coronado Co.*, *supra*, and *United Leather Workers v. Herkert*, 265 U. S. 457.

In the *Coronado Case* there was an attempt on the part of the owners of a coal mine to operate it upon the "open shop" basis. The officers and members of a local miners' union, thereupon, engaged in a strike, which was carried on with circumstances of violence resulting in the destruction of property and the injury and death of persons. A

conspiracy and an intent to obstruct mining operations were established, and it was proved that the effect thereof was to prevent a part of the product of the mine from going into interstate commerce. It was held that this would not constitute a conspiracy to restrain such commerce, in the absence of proof of an intention to restrain it or proof of such a direct and substantial effect upon it, that such intention reasonably must be inferred. It was pointed out that there was nothing in the circumstances or declarations of the parties to indicate that the strikers had in mind any interference with interstate commerce or competition, when they engaged in the attempt to break up the plan to operate the mines with non-union labor, and, conceding that the natural result would be to keep the preponderating part of the output of the mine from being shipped out of the state, the effect on interstate commerce was not of such substance that a purpose to restrain interstate commerce might be inferred.

In the *United Leather Workers Case* there was a strike, accompanied by illegal picketing and intimidation of workers, to prevent, and which had the effect of preventing, the continued manufacture of goods by a trunk company. It was held that this was not a conspiracy to restrain interstate commerce within the Anti-Trust Act, even though the goods, to the knowledge of the strikers, were to be shipped in interstate commerce to fill orders already received and accepted from the company's customers in other states, since there was no actual or attempted interference with their transportation to, or their sale in, such states. There is in this case a complete review of the prior decisions on the subject, upon which the Court concludes (p. 471):

"This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of

its manufacture, is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce. . . .

"We concur with the dissenting Judge in the Circuit Court of Appeals when, in speaking of the conclusion of the majority, he said: 'The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.'"

In its essential features, the present case is controlled by this reasoning. If an executed agreement to strike with the object and effect of closing down a mine or a factory, by preventing the employment of necessary workmen, the indirect result of which is that the sale and shipment of goods and products in interstate commerce is prevented or diminished, is not an unlawful restraint of such commerce, it cannot consistently be held otherwise in respect of an agreement and combination of employers or others to frustrate a strike and defeat the strikers by keeping essential domestic building materials out of their hands and the hands of their sympathizers, because the means employed, whether lawful or unlawful, produce a like indirect result. The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation,—for building is as essentially local as mining, manufacturing or growing crops,—and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act.

The Government relies with much confidence upon *Loewe v. Lawlor*, 208 U. S. 274, and *Duplex Co. v. Deering*, 254 U. S. 443; but the facts there and the facts here were entirely different. Both cases, like the *Coronado* and the *United Leather Workers* cases and the present case, arose out of labor disputes; but in the former cases, unlike the latter ones, the object of the labor organizations was sought to be attained by a country-wide boycott of the employer's goods for the direct purpose of preventing their sale and transportation in interstate commerce in order to force a compliance with their demands. The four cases and the one here, considered together, clearly illustrate the vital difference, under the Sherman Act, between a direct, substantial and intentional interference with interstate commerce and an interference which is incidental, indirect, remote, and outside the purposes of those causing it.

Third: That persons in other states were directly prevented or discouraged from shipping into California. In respect of the alleged instances of direct interference with interstate sales and shipments, the evidence is sharply conflicting, with the preponderance in most cases, we think, on the side of appellants. In many of them the interferences had no connection with the "American plan" or the system and efforts employed to effectuate it, but were in furtherance of independent trade policies or other isolated and disconnected purposes. One such case was that of the Golden Gate Building Material Company, consisting of five plastering contractors, where the basis of the refusal to accept orders for supplies was a protest by certain dealers that the company was buying for individual use and not for resale, and had been formed merely to obtain dealers' prices. A class of interferences strongly pressed in argument was that in respect of plumbing supplies, practically all of which were manufactured outside of the State of California. Lists of plumbing con-

tractors who were not observing the "American plan" were sent to the plumbing supply houses, and some of them refused to sell materials to such contractors. That there was, at least, a sympathetic connection between this action and the "American plan" may be assumed, although plumbing supplies were not within the scope of the permit list. However this may be, and whatever may have been the original situation, the practice was abandoned long before the present suit was instituted, and nothing appears by way of threat or otherwise to indicate the probability of its ever being resumed. Under these circumstances, there is no basis for present relief by injunction. *United States v. U. S. Steel Corp.*, 251 U. S. 417, 444-445.

By the foregoing process of elimination, the interferences which may have been unlawful are reduced to some three or four sporadic and doubtful instances, during a period of nearly two years. And when we consider that the aggregate value of the materials involved in these few and widely separated instances, was, at the utmost, a few thousand dollars, compared with an estimated expenditure of \$100,000,000 in the construction of buildings in San Francisco during the same time, their weight, as evidence to establish a conspiracy to restrain interstate commerce or to establish such restraint in fact, becomes so insignificant as to call for the application of the maxim, *de minimis non curat lex*. To extend a statute intended to reach and suppress real interferences with the free flow of commerce among the states, to a situation so equivocal and so lacking in substance, would be to cast doubt upon the serious purpose with which it was framed.

The decree of the court below must be reversed and the cause remanded with instructions to dismiss the bill.

Decree reversed.